

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,

:

Plaintiff,

: Case No. 01-CR-794

-vs-

:

NATHANIEL JACKSON,

: Judge Stuard

Defendant.

:

NATHANIEL JACKSON'S PROFFER

VOLUME III OF III

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO)
) Case No. 03-137
Plaintiff-Appellee)
vs.) **DEATH PENALTY CASE**
NATHANIEL E. JACKSON)
Defendant-Appellant)

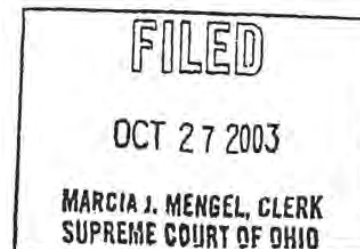
MERIT BRIEF OF APPELLANT, NATHANIEL E. JACKSON

On Appeal from the Court of Common Pleas, Trumbull County, Ohio
Case Number 01 CR 794

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JACKSON



indictment decisions allows for arbitrary and indiscriminatory imposition of the death penalty.

The United States Supreme Court's decision in *Woodson v. North Carolina* (1976) 428 U.S. 280, made it clear that the fatal flaw of mandatory death penalty statutes is that without specific standards the process of deciding who is to be sentenced to death is shielded from judicial review.

Uncontrolled discretion of the prosecutor is one way Ohio's capital statutes circumvent this requirement. Also, the Ohio system has resulted in the imposition of death penalties in a racially discriminatory manner, with blacks and those who killed white victims being much more likely to get the death penalty.

The right to life is a constitutionally protected fundamental right. *Commonwealth v. O'Neal* (1975) 327 N.E. 2d 662, *Roe v. Wade* 1973) 410 U.S. 113, *Johnson v. Zerbst* (1938) 304 U.S. 458, *Yick Wo v. Hopkins* (1886) 118 U.S. 356. The Fifth and Fourteenth Amendments to the Constitution state explicitly that neither the United States Government nor any of the individual state governments may deprive a person of his life without due process of law. "Aside from its prominent place in due process clause itself, the right to life is the basis for all other rights. In the absence of life all other rights do not exist." *O'Neal* at 688.

Due process guarantees prohibit the taking of life unless the State can show a legitimate and compelling State interest. *Id.* at 668; *Commonwealth v. O'Neal II* (1975) 339 N.E. 2d 676, *State v. Pierre* (1977) 572 P. 2d 1338. Moreover, when fundamental rights are involved, substantive due process requires that "[e]ven though the governmental purpose

virtually uncontrolled indictment discretion allows arbitrary and discriminatory imposition of the death penalty. Mandatory death penalty statutes were deemed fatally flawed because they lacked standards for imposition of a death sentence and were therefore removed from judicial review. *Woodson v. North Carolina* (1976) 428 U.S. 280. Prosecutors' uncontrolled discretion violates this requirement.

Ohio's system imposes death in a racially discriminatory manner. Blacks and those who kill white victims are much more likely to get the death penalty. While African-Americans are less than twenty percent of Ohio's population, forty-nine percent (49%) of Ohio's death row inmates are African-American. See Ohio Public Defender Commission Report, 1999; see also The Report of the Ohio Commission on Racial Fairness, 1999. While few Caucasians are sentenced to death for killing African-Americans, over forty African-Americans sit on Ohio's death row for killing a Caucasian. *Id.* Ohio's statistical disparity is tragically consistent with national findings. The General Accounting Office found victim's race influential at all stages, with stronger evidence involving prosecutorial discretion in charging and trying cases. "Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities," U.S. General Accounting Office, Report to Senate and House Committees on the Judiciary (February 1990).

Ohio courts have not evaluated the implications of these racial disparities. While the General Assembly established a disparity appeals practice in post-conviction that may encourage the Ohio Supreme Court to adopt a rule requiring tracking the offender's race, R.C. 2953.21 (A)(2), no rule has been adopted. Further, this practice does not track the

victim's race and does not apply to crimes committed before July 1, 1996. In short, Ohio law fails to assure against race discrimination playing a role in capital sentencing.

Due process prohibits the taking of life unless the state can show a legitimate and compelling state interest. *Commonwealth v. O'Neal II* (1975) 339 N.E. 2d 676; *Utah v. Pierre* (1977) 572 P.2d 1338. Moreover, where fundamental rights are involved personal liberties cannot be broadly stifled "when the end can be more narrowly achieved". *Shelton v. Tucker* (1960) 364 U.S. 479. To take a life by mandate, the State must show that it is the "least restrictive means" to a "compelling governmental end". *O'Neal* at 678.

The death penalty is neither the least restrictive nor an effective means of deterrence. Both isolation of the offender and retribution can be effectively served by less restrictive means. Society's interests do not justify the death penalty.

The Due Process and Equal Protection Clauses prohibit arbitrary and capricious procedures in the State's application of capital punishment. *Gregg v. Georgia* (1976) 428 U.S. 153; *Furman* at 255. Ohio's scheme does not meet those requirements. The statute does not require the State to prove the absence of any mitigating factors or that death is the only appropriate penalty.

The statutory scheme is unconstitutionally vague which leads to the arbitrary imposition of the death penalty. The language "that the aggravating circumstances...outweigh the mitigating factors" invites arbitrary and capricious jury decisions. "Outweigh" preserves reliance on the lesser standard of proof by a preponderance of the evidence. The statute requires only that the sentencing body be convinced beyond a

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Roderick Davie,

Petitioner,

y.

Betty Mitchell, Warden,

Respondent.

Case No. 1:99CV2400

Hon. James G. Carr

AFFIDAVIT OF MARTHA PHILLIPS

STATE OF OHIO

COUNTY OF FRANKLIN)

Martha Phillips, after being duly sworn according to law, state as follows:

- 1) I am an investigator employed by the Office of the Ohio Public Defender.
- 2) As part of my duties with this Office I am assigned to Roderick Davie's case.
- 3) The attorneys assigned to the case, Richard Kerger and Randall Porter, requested that I identify the procedures that were used to draw Roderick Davie's petit venire in his capital case. He was tried in March 1992.



4) I initially spoke with Connie Pierce who is currently one of the jury commissioners for Trumbull County. Valerie Moffet, a former associate of Mr. Kerger's, had initially met with Ms. Pierce.

5) Ms. Pierce informed me that she was not aware of the procedure employed during the time period of Roderick Davie's trial.

6) Ms. Pierce told me that former jury commissioner, Janet Franklin, presently works for the Trumbull County Probate Court. Ms. Pierce told me that she did not know where Ms. Ferra lived or worked.

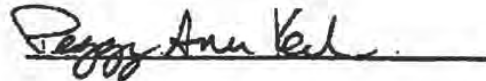
7) I contacted Ms. Franklin by telephone. She informed me that she had been instructed not to speak with me and instead I should make a public records request.

8) I couldn't locate a telephone number for "Kathy Ferra", but I did find an address and telephone number for an individual named "Charles Ferra.", who may be Kathy Ferra's husband. I have called that number repeatedly. Once I left a message on an answering machine and the other times there was no answer. I left a message on the answering service to return my telephone call, but it was never returned.

Further affiant sayeth naught.


MARTHA PHILLIPS

Sworn to and subscribed before me this 25th day of November 2002.





PEGGY ANN KENT
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES NOV. 5, 2005

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

-vs-

NATHANIEL JACKSON,

Defendant.

:

: Case No. 01-CR-794

:

:

:

AFFIDAVIT OF NATHANIEL JACKSON

STATE OF OHIO

:

: ss:

COUNTY OF RICHLAND :

Nathaniel Jackson, after being duly sworn according to law, states as follows:

1. I am the Defendant in the above case.
2. I did not have good communications with my attorneys before trial. I think that Jim Lewis only came to see me twice. The other attorney, Tony Consoldane, was the one who most visited with me. About every time that he saw me, it was on the weekend.
3. Tony Consoldane was never very helpful. He would ask me at the beginning of our meetings what was happening. That made me really frustrate mad. I was in jail, nothing was happening for me. The question should have been what was happening for Tony since he was not in jail and he was suppose to be working on my case. I would ask him to do stuff and he would never get it done. He did not share with me most of the information that the prosecutor gave him before trial. Basically I got nothing. I wanted to know what the witnesses were going to say.
4. I told Tony Consoldane that I wanted a new attorney. He got real mad. He told me that he was working hard on the case and this showed by the fact that he always took his own time to visit me on the weekends. It was not my fault that he never visited me on the week days. He said that the judge knew that he was doing a good job and that I would not get another attorney. He then ended the meeting with me and left.
5. I had one meeting with the prosecutor's investigator. The attorneys did not warn me that he was coming to see me. He was a Black man. He showed me the tape of my statement



to the police. At the end of the tape he starting asking me lots of personal questions concerning Donna and me. He was to know about our sex. He ask me if "it was good" with an older woman and stuff like that. He said I should share that stuff with him since we were both Black. I stopped the meeting and went back to my cell. I told Tony about this and I never saw the Investigator again. One other time I saw the Investigator in the hallway of the jail. He asked me why I told Consoldane about the sex questions. I just walked away.

6. Prior to trial I wrote the Judge a letter to get new attorneys. That letter is attached to this Exhibit. I wrote the letter because my attorneys were not visiting with me like they were suppose to. They would not listen to me. I placed the letter in an envelope with a stamp on it and sent it out to be mailed. I never did hear back form the Judge. I wrote the letter in February 2001. I always thought that the Judge got my letter and ignored it. My post-conviction attorney showed me a copy of the letter. He said that he got it from my trial attorneys' files. I did not know that they got a copy of the letter. The copy of the letter that my attorney showed me has Tony Consoldane's name written to the top. I did not write Consoldane's name on the top left hand corner of the letter. It was not on the letter when I mailed it to the Judge.

7. The trial made me mad. The attorneys would not listed to me or do what I said. That would not ask the questions that I told them to ask. On the break they would go talk to the prosecutors. I was real upset that Consoldane was more worried about taking up the jury's time, then getting it right.

8. At the sentencing hearing I got a new attorney. The first time that I met him was in the courtroom on the day of the sentencing hearing. I did not know him from a bucket of paint. The Judge told me that I could get a continuance. By that time I was so upset with my attorneys that I just wanted to get it over.

9. The handwritten paper that is attached to this affidavit, was part of a letter written sent to me by Donna Roberts.

Futher Affiant sayeth naught


NATHANIEL JACKSON

Sworn and subscribed to me this the 20th day of May 2004



ROBERT K. LOWE
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.


Notary Public

AS FAR AS A LOOK ALIKE, I CAN'T BELIEVE YOU HIT

2. THEY BUT HE + RSF WERE ALWAYS TALKING ABOUT GETTING
HIS A VAGRANT'S BODY WHO COULD REPLACE RSF. I KEPT

Q THERE ... I THINK THAT'S WHY HE KEPT TRYING TO GET TOGETHER
RE AND ... WITH KATHY THOMAS, OUR INSURANCE AGENT FOR ANOTHER
R THINGS, MILLION IN COVERAGE, AND SAYING IT WAS FOR ME BECAUSE
OSC METAL I WOULDN'T BE ABLE TO TAKE CARE OF MYSELF. SHE TESTIFIED
GS YOU THAT THE 3 OF US WERE PLAYING 'PHONE TAG' IN NOVEMBER.

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BUT THE HOLIDAYS WERE BUSY SO RSF SAID HE'D DO IT IN JANUARY WHEN THINGS SLOWED DOWN. SO, I KNEW ABOUT THE MILLION BECAUSE I WAS INVOLVED IN THE 'PHONE TAG' TRYING TO HELP MAKE AN APPOINTMENT. HE WAS DETERMINED TO GET IT ASAP IN JANUARY. HE HAD TO SCHEDULE A COMPLETE EXAM TO GET A MILLION. I BELIEVE HE UPPED THE ST. FARM FROM 250K TO 300K BECAUSE HE DIDN'T NEED AN EXAM FOR THE EXTRA 50K. I SWEAR I DID NOT KNOW ABOUT THE EXTRA 50K.

HE HAD A PRIVATE INVESTIGATOR'S LICENSE IN THE STATE OF FLORIDA AND SOLD IT JUST BEFORE I MET HIM. WAIT — HE WAS STILL SERVING SUPLENAS — I WENT FOR THE RIDES WITH HIM. HE HAD ALREADY BEEN WORKING FOR W. W. GRANGER, INC. (ON THE STOCK EXCHANGE). BUT A COUPLE OF YEARS LATER HE WAS AFRAID THEY WERE GOING TO TAKE PART OF HIS AREA AWAY (LESS COMMISSIONS) SO HE SAID HE HURT HIS BACK AT THE OFFICE/WAREHOUSE AND WENT ON WORKMEN'S COMP. FOR A COUPLE OF YEARS AND MADE A SETTLEMENT, PLUS GOT 100% OF HIS RETIREMENT FUND.

I DIDN'T PAY A LOT OF ATTENTION TO HIS GOINGS ON. I WAS AFRAID OF HIM SOMETIMES. HE COULD BE QUITE VIOLENT. IN FACT, WHEN HE MET ME, HE WAS STILL MARRIED + LIED AND SAID HE WAS DIVORCED BECAUSE HE WAS AFRAID I WOULDN'T WANT TO GO THROUGH THAT. HE PAINTED HER SILVER LINCOLN WITH BLACK PAINT WHILE SHE WAS AT WORK, STOLE HER BAG WITH #?/10/# PICTURES IN IT TOLD EVERYONE SHE SLEPT WITH HER

3

EX-HUSBANDS FATHER (HER FATHER-IN-LAW). HE SOLD ME THE HOUSE SO SHE WOULDN'T GET ANY MONEY. HE WAS PLANNING HOW TO THROW A MOLOTOV COCKTAIL THROUGH HER ATTY'S, HOUSE WINDOW. AT THE SAME TIME HE WAS FIGHTING WITH HIS FIRST WIFE OVER CHILD SUPPORT + TRANSFERRED A 25K CD INTO MY NAME. HE SAID HE WAS PENNILESS AND HAD NO PLACE TO LIVE. HE WAS A VICIOUS MAN, ONE YOU'D BETTER NEVER PISS OFF. HONEST. HE RIPPED OFF MANY CREDIT CARD COMPANIES. WE WERE EARNING OVER 200K A YEAR, BUT IT WAS NEVER ENOUGH. IT'S LIKE HE JUST HAD THAT IN HIM.

AS FOR ME, I WAS ALREADY WORKING FOR THE PLASTIC SURGEON FOR 9 YEARS WHEN WE MET, IN JUNE, 1981. WE WERE DIVORCED IN 1985 TO PROTECT MY ASSETS. HE DIDN'T WANT TO TAKE ANY CHANCE OF HIS TWO SONS EVER GETTING ANYTHING. JUDGE THOMAS SWIFT (WARREN) IN PROBATE SAW HIS WILL: 1/3 TO THEM, OF COURSE, HIS KIDS CAME UP TO OHIO TO FIGHT IT - AFTER HIS FUNERAL. THEY ARE EXACTLY LIKE HIM, MONEY GRUBBERS.

KATHY THOMAS

LARRY SOUTHWICK

C/O STATE FARM

C/O GREYHOUND BUS STATION

MAHONING AVE.

E. MARKET ST.

Y-TOWN 44515

WARREN, OHIO 44

330-793-1136

VJ-174

DEAR HONORABLE

JUDGE STUARD:

I NATHANIEL JACKSON AM WRITING IN REGARDS TO DIFFERENT COUNCIL, DUE TO THE FACT THAT MY ATTORNEY ANTHONY CONSOLDANE IS NOT REPRESENTING ME RIGHT AN I HAVE A CAPITOL MURDER C AN NOT ONE TIME HAS HE BEEN TO BRING NONE OF THE TAPINGS SO THAT I CAN HEAR THEM, AN EVERYTIME HE CAME TO SEE ME HE WAS ALWAYS SUPPOSE TO BEEN HAVE BRING THEM BUT KEEP COMING WITH EXCUSES AN ITS STARTING TO SCARE ME BECAUSE HE'S GOT ME THINKING NOW THAT HE'S AGAINST ME, AN THEN HE LAUGHED IN MY FACE AN TOLD ME THAT HE DIDNT HAVE TO COME IN ON HIS OFF DAY, BUT WH WAS THE PURPOSE WHEN HE STILL DIDNT BRING THE INFORMATION THAT IVE BEEN ASKING FOR SINCE DECEMBER, AN HE GOT VERY PERSONAL WHEN I ASKED IF HE HAD TIME TO TAKE MY CASE BECAUSE WHEN HE CAME IN HE QUOTE IVE BEEN VERY BUSY AN HAVEN'T HAD THE TIME TO GET DOWN TO SEE YOU SO I CAME ON MY OFF DAY AN WHEN I ASKED ABOUT THE INFORMATION THAT HE'S BEEN PUTTING OFF HE GOT EVEN MORE PERSONAL AN TOLD ME THAT HE WAS FINISH TALKING WITH ME, BUT YOUR HONOR HE HAS NOT BEEN WORKING WITH ME AN I WOULD LIKE FOR THE JUDGES TO APPOINT ME NEW COUNCIL BECAUSE IM DEALING WITH MY LIFE AN HE'S NOT TAKING MY CASE SERIOUS, AN I WOULD PREFER STAND TRIAL BY MYSELF THEN TO HAVE ANTHONY CONSOLDANE SO PLEASE YOUR HONOR TAKE THIS REQUEST INTO CONSIDERATION BECAUSE MY LIFE IS AT STAKE. THANK YOU

NATHANIEL JACKSON

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, :
 :
Plaintiff, : Case No. 01-CR-794
 :
-vs- :
 :
NATHANIEL JACKSON, :
 :
Defendant. :

EXHIBIT _____

AFFIDAVIT OF JESSICA LOVE

STATE OF OHIO :
 : ss:
COUNTY OF FRANKLIN :

Jessica Love after being duly sworn according to law, states as follows:

1. I am investigator employed by the Office of the Ohio Public Defender. I have been employed by the Office since June 1997. I have a Bachelor of Arts degree in Sociology and Criminal Justice from Ohio University. I have attended national and state conferences on the death penalty, including mitigation investigation training.

2. In my capacity as an investigator, I have been assigned primarily to conduct sentencing investigations in capital cases. I have conducted sentencing phase investigations in approximately 30 capital cases. These cases have been both at the trial and post conviction levels.

3. I was assigned to the above case during the post-conviction process. I had no contact with the trial attorneys, Nathaniel Jackson, or any other witness in relationship to this case prior to the Court imposing the deposing the death penalty upon Nathaniel Jackson.

Further affiant saith naught.


JESSICA LOVE

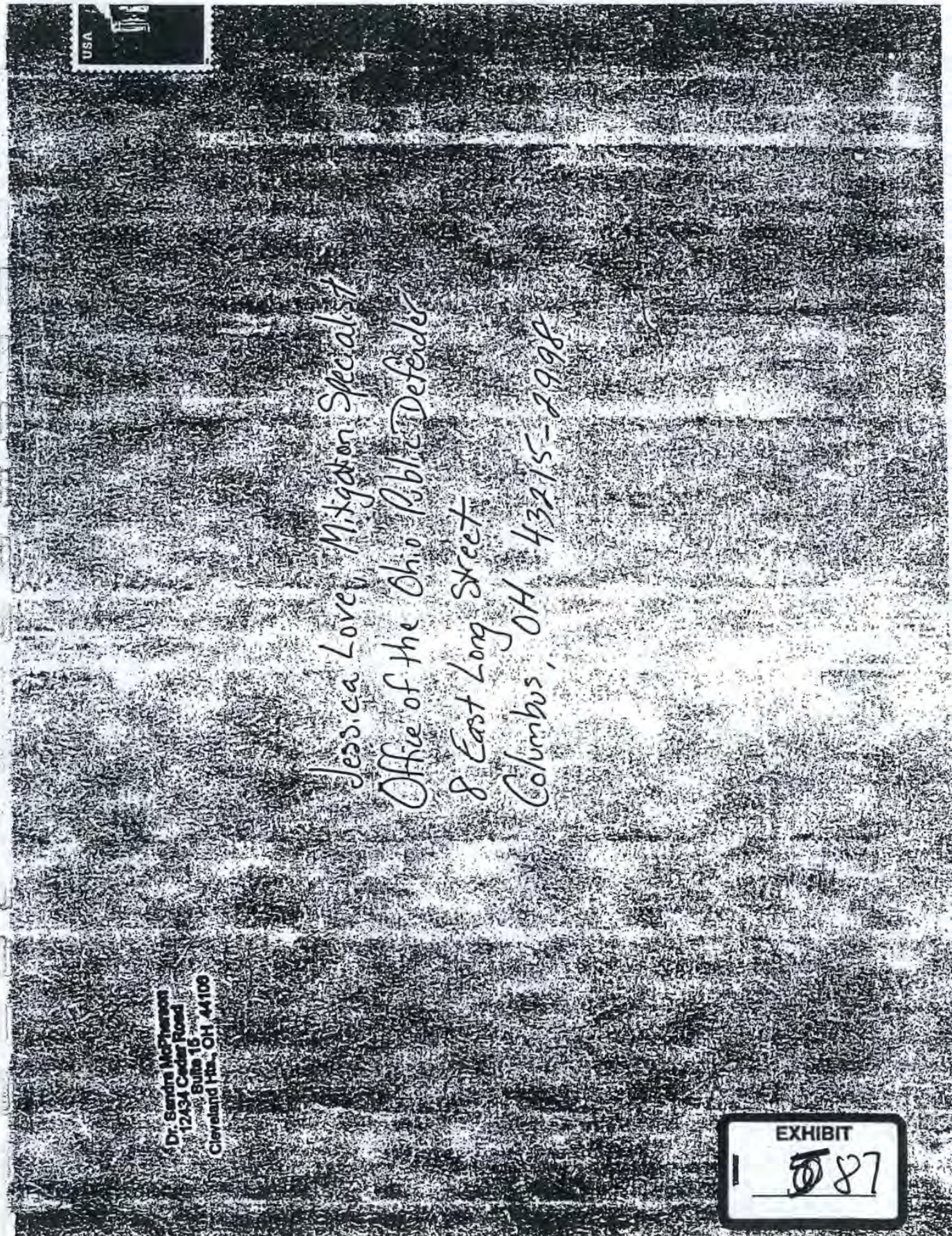
Sworn to and subscribed in my presence this 21st day of May, 2004.





NOTARY PUBLIC

RANDALL L. PORTER Attorney At Law
Notary Public, State of Ohio
MY COMMISSION IS NON-EXPIRING



Jessica Love, Mitigation Specialist
Office of the Ohio Public Defender
8 East Long Street
Columbus, OH 43215-2998

Dr. Sandra McPherson
12434 Cedar Road
Suite 15
Cleveland Hts., OH 44109



AFFIDAVIT

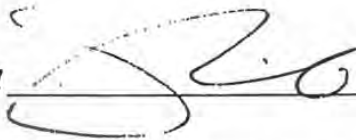
*The State of Ohio,
County of Cuyahoga*

In the matter of: State of Ohio v. Nathaniel Jackson

On the 26th day of November A.D. 2003, before me the undersigned authority within and for said County, duly authorized to administer oaths, personally appeared Sandra B. McPherson, Ph.D. ABPP who, being by me duly sworn, says that

I am the custodian of records for my psychology practice. The enclosed is a complete copy of my file for Nathaniel Jackson.

Signed



Date

11/26/03

Subscribed in my presence and sworn to before me, this 26th day of Nov., A.D. 2003



HEATHER KOVACH

Notary Public, State of Ohio, Medina Cty.
My commission expires Aug. 18, 2006

Sandra B. McPherson, Ph.D.

Clinical and Forensic Psychologist

12434 Cedar Road, Suite 15
Cleveland Heights, OH 44106

(216) 721-1961
fax (216) 721-1914

Sensitive Material – Discretion is Necessary

PSYCHOLOGICAL REPORT

SUBJECT: Nathaniel Jackson

DATE: 11/12/02

REASON FOR REFERRAL:

Mr. Jackson was evaluated as part of developing information relevant to the mitigation phase of his capital murder trial.

PROCEDURE:

Interviews of Mr. Jackson by S. McPherson and D. McPherson; psychological assessment administered by D. McPherson, M.Ed., assisting psychologist: Thematic Apperception Test, WAIS-3, MMPI-2, WRAT-3, and Bender Gestalt. Rorschach administered by S. McPherson. Review of records from discovery and from other sources. Contact with family members.

RESULTS

Defendant's Retrospective on His Own History:

He was asked to discuss his life in stages. When asked about his first five years, he said that his maternal grandmother was very important to him, as was his mother. He had an older brother, Charles, and a younger sister and brother, Taushia and Anthony, respectively. He did not have very much contact with his biological father (Charles Paige), remembering perhaps two times when he saw the man. He lived with his mother, and he frequently spent time with his maternal grandmother. (Other records indicated the two younger children were the product of his mother's marriage to Anthony Komegeay.)

With respect to his elementary school years, he said that he tried to do his best and in many ways he really liked school, but he also got into a lot of difficulty and tended to have problems with other students at times. He knew that he had been identified as having a behavior problem, and he stated that when he was placed in the Stambaugh School Special Program he did best. Interestingly, he remembered being taken out of that program after he had apparently done somewhat well and put back into the mainstream curriculum with the result that he immediately got into trouble again and was put back in

Stambaugh's Special Program where, at least per his recollection, he did better once again. He left school at the age of 17 while he was still in the 11th grade.

From that time onward, his life involved basically living on the street in what was a crime-ridden and violent environment. He did have some regular jobs from time to time, but none of them were high paying. His drug use (see below) was also a part of his problem. He began getting into trouble almost immediately upon moving out from his mother's house.

He had a series of relationships, and he began getting into more and more trouble of a legal type (see below). Throughout the ensuing years, he had several relationships, one with the mother of his daughter, now age seven. That individual is now married, but he has tried to have some contacts with his daughter. He also has a son who would now be four years of age. He has had no contact with that child whose life has been a somewhat tragic story in and of itself. The child was born to Mr. Jackson and his then significant other. Shortly after birth, the child had a stroke and went into some seizures and was life-flighted to Rainbow Babies' & Children's Hospital. Over an ensuing period of time, the youngster was stabilized and diagnosed upon exit as having cerebral palsy. To the best of his knowledge, the child continues to be wheelchair bound or in a brace with limited ability. Subsequently, the relationship broke up, and the mother of the child placed the youngster with her mother, essentially abandoning him. When Mr. Jackson tried to visit his son, the maternal grandmother obtained a Restraining Order, and he has never been allowed to see him since.

Mr. Jackson indicated he grew up in an extremely violent neighborhood. (Consistently, there is the letter in the school records from his mother indicating that he should be given an excused absence because a man and a woman had been shooting at him.) After he left his mother's home, he was still primarily living on the street and in a neighborhood of significantly antisocial and violent people. He himself was shot four or five times. He indicated that for the most part, he had not obtained any hospital or medical attention for these events; in fact, he said he carried a bullet in his torso somewhere which causes him periodic difficulty. He sometimes more or less freezes and is unable to move until the spasm passes. He has been shot in the left arm, elbow, and head, all of these wounds involving grazing injuries. In addition, he indicated that he had a significant relationship with a woman and, in fact, was considering a permanent union when she was killed. She was apparently involved in some type of merchandising occupation and was killed by someone who wished not to pay for the merchandise obtained from her. Mr. Jackson also recounted that there was an occasion in which he left some clothes at the home of a person whom he viewed as a friend and with whom he had stayed briefly. When he returned to get his clothing, that individual confronted him with a gun and was not willing to give Mr. Jackson his clothes. He noted that he had a particularly nice set of outfits at the time. He felt the man's turning on him was a major wrong because he had trusted him and viewed him as a friend.

The relationship that he had with Donna was one where he thought he would avoid the problems he had had with some of the younger women with whom he engaged. He acknowledged that Donna was significantly older than he. He said that he thought perhaps it would work out better because she would be more stable and more able to provide responsibly for him. He said that she indicated to him that she was divorced in 1985 and that her ex-husband, though he now lived with her, was not romantically involved with her.

Test Results:

Results from the WAIS-3 were as follows:

Vocabulary	5	Picture Completion	8
Similarities	5	Digit Symbol-Coding	6
Arithmetic	5	Block Design	7
Digit Span	12	Matrix Reasoning	13
Information	5	Picture Arrangement	10
Comprehension	5		
Verbal IQ	82	Performance IQ	89
Full Scale IQ - 84			

Above results showed significant variation among the subtests but overall performance, given test bias factors and educational deficit, reflected low average or better capacity. Deficit areas would be consistent with longstanding learning problems.

Results from the Bender-Gestalt showed no significant deficits of performance. There were some distortions and inadequacies that appear to be reflective of some lack of investment in performance.

Results from the Wide Range Achievement Test - 3 were as follows:

	Raw Score	Std. Score	%tile	Grade Score	Absolute Score
Reading	36	75	5	5	503
Spelling	43	103	58	HS	524
Arithmetic	46	111	77	HS	532

Above results reflected significant relative deficit in reading skills.

Results from the MMPI-2 indicated a need to present well and to overstate virtues. At the same time, there was a tendency toward some endorsement of symptoms that suggested an over-presentation of pathology. The overall handling of the test was inconsistent at times and interpretation, therefore, has to be somewhat guarded. What can be stated, however, is that there was neither a consistent attempt to look bad nor a consistent attempt to overstate positives. The main scale profile did not show overstatement of pathology. There was a spike 4 configuration that reflects endorsement of antisocial attitudes and/or impulsive behaviors. He showed concerns and anxiety about his current situation and the likely outcome. There were also some problems when it came to storing of angry feeling and he appeared to be an individual who can lose control because he has been storing and suppressing a lot of negative feeling without being aware of the degree to which he does so. Sub-scales reflected his sense that he is being pursued and persecuted, which is not inconsistent with his current reality situation and also that he feels a sense of alienation from his own functioning. He attempts to put on a facade of being in control and not caring what is happening but, in fact, there is an underlying significant apprehension. At the same time, he can affect a kind of cynicism which may mislead others to believe that he is in control of himself and the situation. Critical items include acknowledging misuse of alcohol and use of marijuana as well as endorsing that he has made mistakes in his life. There is some tendency toward blaming of others but it is not a pronounced assertion.

Projective tests provided some insight into underlying personality characteristics and potentials. Analysis of thematic materials on the TAT indicated an individual who does not know how to go about managing life but who has incorporated that he should know better than he does. He has no real concept of how to proceed and there is no one available to provide him with guidance. Life tends to hand down punishment for bad behavior and he has learned to accept what happens but not to evaluate and plan to avoid negative consequences. He does not see much potential in the workplace, which is consistent with the reality of his environment. He cannot figure out how people fit into situations or what they are thinking. In effect, he is a poor reader of people even though he thinks he knows about them.

Results from the Rorschach, evaluated using the Exner protocol, indicated a valid and reliable record for interpretation. There were no indications of any serious mental health pathology, but rather he appears to be an individual who lacks the capacity to cope adequately with his environment. He tries to keep emotions at bay but doesn't have the wherewithal to do so and still adequately manage other and often pressing demands. He is rather constricted and limited in how he responds to others. The avoidance of processing emotional stimulation is extreme and suggests a defense in order to avoid feeling the painful affect that comes about when he lets himself be vulnerable to contacts by others. This feature is consistent with the history of behavioral deficit and lack of environmental support and effective intervention. There are underlying negative to self attitudes which he also tries to avoid directly experiencing. At the same time, there is self focus, a pattern associated with insecurity and neediness. He is significantly limited when it comes to dealing relationally as might be expected, and again his history has

involved difficulties that he has sought to remediate but has not the least idea as to how to handle. He tends to be guarded in how he approaches situations but the defensive stance means that he is not aware of all the aspects of the world that he needs to be in order to manage. He makes decisions on inadequate information and thus adds impulsivity of thinking to the existing disinhibitions that are part of the hyperactivity complex.

Legal History

His initial problems with the legal system occurred in his mid-teens when he did about six months in detention home. He had been charged in connection with driving violations and unruly behavior. He apparently was absenting himself from school. After he became an adult he worked at various jobs but did not have any regular or ongoing employment of any substance. He was incarcerated four times at Lorain Correctional as follows: 1/92 for aggravated burglary; 2/96 for having a weapon under disability (as a convicted felon he is not allowed to have a gun); 2/01 for charges in connection with a stole vehicle and stolen license plates. He apparently was briefly released but did not follow up appropriately while on parole and was returned to the facility and then released on 12/12, after which the crime took place. He was also arrested in connection with receiving stolen property, unauthorized use of a vehicle, and driving under suspension. According to the defendant and his counsel, during his time in prison he did not present as an adjustment problem.

School Records:

He did not complete the 11th grade and there was inconsistent attendance and involvement before he finally dropped out. He attended a number of different schools. School records indicated the following.

Behavioral problems were noted as of the 1st grade, or immediately upon his entry into a formal academic setting. Those behavior problems continued throughout the time that he was in school up through the 11th grade level, which was the point at which he left. By the 3rd grade, he had been suspended. He was finally assessed at the 7th grade level and found to have significant problems and to be in need of special educational assistance. At that time, His Wechsler Intelligence Scale results were: Verbal IQ, 72; Performance, IQ, 78; and, Full Scale IQ, 73. Interestingly, while he had below grade level achievement, he was not deficient at the level that the above score, particularly the Verbal one, might have suggested, particularly given that he was coming out of an environment that was not conducive to correcting or assisting him with his problems. However, consistent with the 7th grade results, in 1989 at the 10th grade level, he was tested with the Stanford-Binet and obtained an IQ of 70.

Other information from the school records indicated a pattern of absenteeism which tended to increase over the course of the year, a high potential for getting involved in altercations with peers, behavior problems on the bus and it was also noted as of the 9th grade that he was at high risk for chemical dependency.

Intriguingly, as of the 8th grade, it was noted that he was sleeping in class. That behavior coincided with his own retrospective on his drug use which began and was problematic fairly soon after his 13th year.

Another intriguing piece of information involved a letter from his mother asking for an excused absence because a man and woman had shot at him the day before.

Other Information:

Mr. Jackson indicated that he began using marijuana when he was 13 years of age and rather rapidly arrived at a point where he would use any marijuana which happened to be available to him when he was in a given situation. He has occasionally used alcohol but, apparently in recent years, is not an alcohol abuser, nor has he engaged with other of the more popular drugs. Consistently, records from prior incarceration and presentence sources, along with the school records, indicate a long-standing involvement in use of substances and a lifestyle consistent with supporting that use. He has had some treatment experiences but has relapsed once out on the street.

Audio tapes involving conversations between Mr. Jackson and Ms. Donna Roberts were reviewed as well as video tape of their interrogations. The audio tapes, of course, precede the video tape, which took place after the arrest. The audio tapes were made of conversations occurring between the two prior to the release of Mr. Jackson from prison. Most of the audio tapes involve repetitive commentary conveying love and sexual intent along with planning for a future together and the demise of Ms. Roberts' husband. Her role is one of a kind of kittenish Southern belle. Her voice is very different from what is seen on her subsequent video tape, where she projected a ^{victim role,} ~~coy young girlfriend type role.~~ For his part, he asserted a stance of being the man in charge and assuring her of his undying devotion. In subsequent video tapes, Donna presented as distraught over her husband's death and knowing nothing about it. Over time, however, she was presented with more and more information but she nonetheless tried to maintain the victim role.

Diagnosis:

Axis I – Attention Deficit/Hyperactivity Disorder, Chemical Dependency, marijuana, now in remission in a controlled setting; ~~his~~ history of alcohol abuse, ^{history} of cocaine abuse.

Axis II – Antisocial Personality Disorder. (However, his antisocial characteristics are a function of his involvement in the counterculture of his neighborhood. He is capable of loyalty to persons who are important to him.)

Axis III – Status post gunshot wound to his hand, now apparently recovered. History of several other gunshot wounds, one of which continues to create periodic symptomatic status. History of mild asthma with periodic need for medication to assist breathing.

Axis IV – Problems with primary support group, Problems related to social environment, Educational problems, Legal Problems.

Axis V – GAF = 40; major impairment in several areas of function

Summary:

Mr. Jackson is an individual who was raised in an environment that was significantly violent and dyscontrolled that persons surviving in the situation would have been more likely than not to develop a sense of chronic threat and insecurity. Consistently, his own story is one where he has had to defend himself and where fights have not been infrequent, with fairly serious consequences to those participating. Early educational difficulties and current test results are consistent with the presence of an AD/HD component. The history of significant drug abuse starting at the age of 13 and probable dependency on marijuana is also a pattern that is well known for AD/HD persons. There is vulnerability to use, abuse and dependency on drugs to alleviate the chronic tensions and to escape the punishment that comes from the environment as a result of behavioral dyscontrol. Consistently, he chose not to abuse drugs such as methamphetamines or PCP. His use also reflected an occupational component in that he was living in a drug infested environment and, at least sometimes, involved in the lifestyle of using and selling. Given his educational limitations and social situation, obtaining employment with reasonable compensation in the depressed area in which he lived was unlikely.

His mother was on her own much of the time. Although he loves her and his grandmother, they were unable to intervene effectively with his special behavioral and learning needs. As time went on, the family system fragmented further. At the present time, his mother indicates she does not know the status of his sister and cannot be sure how to reach her. Similarly, she was unsure of the current situation of either of his brothers. She stated she works at a physically demanding job and has little energy except to go home and rest so as to be able to work the next day.

He had no male figure immediately available to him to provide him with alternative guidance from what was occurring as a function of his finding his own way in a hostile situation. There was thus no real functioning family system for him as he tried to deal with his needs for support. He does have the capacity to relate to other human beings, and it has been indicated in the records obtained that he has some artistic potentials.

His vulnerability to influence within the context of the relationship to Donna was high: she was older, apparently stable to his view, held out a promise of a more financially secure existence, and catered to his need to be seen as adequate.

He has been able to maintain himself in a stable fashion when he was prior incarcerated and, therefore, it can be reasonably inferred that he can be a productive member of the general population.



Sandra B. McPherson, Ph.D. ABPP
Clinical and Forensic Psychologist

STATE OF OHIO v. NATHANIEL JACKSON
Case No 01-CR-794

The Defendant's prior record consists of the following:

May 1, 1995 11-11-96	RSP - Disposition Unreported WEAPONS & DIS. 1 1/2 CONCURRENT / RELEASED
April 21, 1995	Theft, Criminal Trespass, Drug Abuse - Dismissed
Feb. 4, 1997	Robbery - Disposition Unreported
May 5, 1997	Theft - Disposition Unreported
Nov 25, 1997	Att. Agg. Burg. - Disposition Unreported
May 18, 1998	2 Counts Theft - Disposition Unreported.
July 11, 2001	RSP, Falsification - Disposition Unreported
July 19, 1999 1999	RSP, Possession Drug Para - Disposition Unreported
May 9, 2000	RSP - Disposition Unreported
June 13, 2000 AUG 2000	RSP - Motor Vehicle - Disposition Unreported FTA OPEN CONTAINER
Nov 1, 2000	2 Cts. RSP - 8 months
Feb 28, 2001	RSP - 1 year + 7 mos. CONCURRENT
May 23, 2001	RSP - Case Held
Sep 19, 2001	RSP - Case Held
1/31 / 1992	SUSPENDED SENTENCE (STOCK) / RELEASED AFTER 9 mos 5-25 CONCURRENT 178 DAYS CREDIT AGG. BURGLARY X 3
11 / 1991	RSP

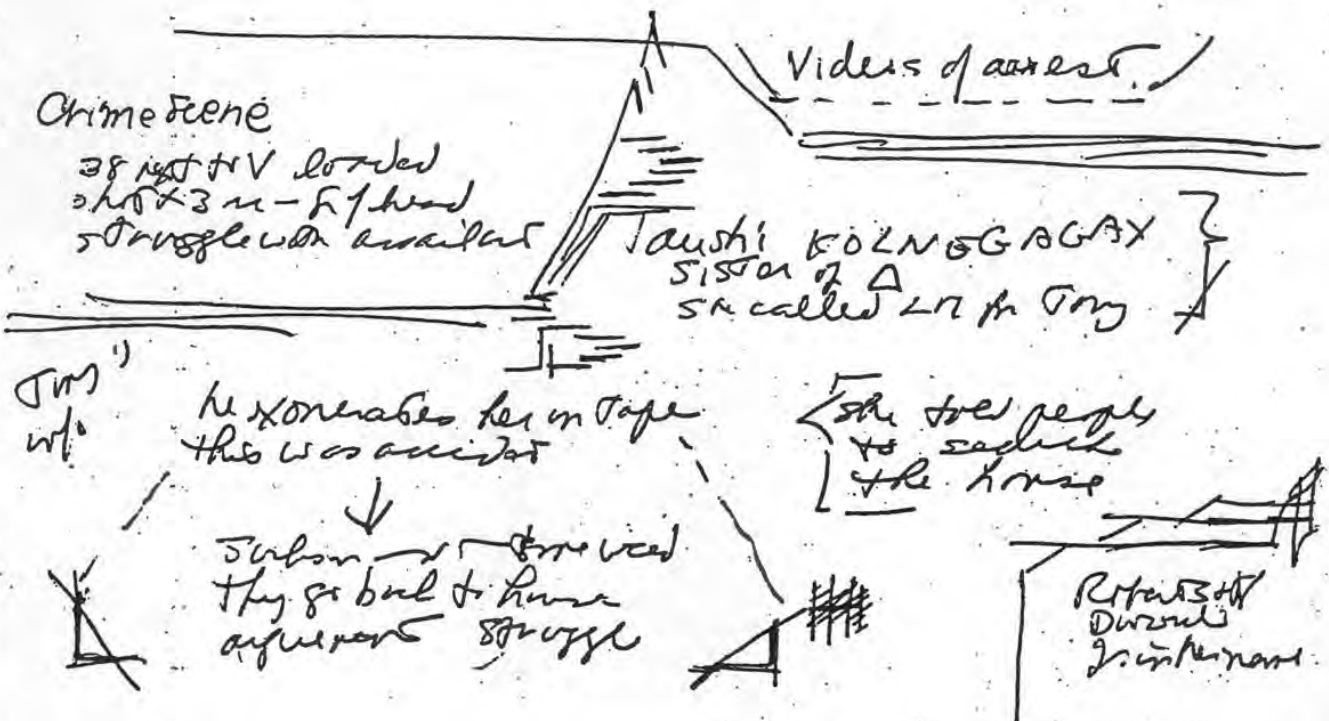
(Sister's 3)
address in page
309 So. Pearl
St. Birmingham

Nathaniel Jackson April 29
01 CR 794
No assets

(Jury John M. Soward)

Asst Roberts (COA) tried to name Mason as somebody who
attempted to go to the real house - see order
of the
Vandie Hines Paper for the other - and to keep

Criminal Recs
School Recs
Famils
LCG records
Mentioned by LCG 1/92 by Ray
2/96 was with part
2/01 so called + large
"return 10/01 after party
to the wife
12/9 released (12/12
Fingerprint
Killer)



1-330 JTS 1212

Gausman

Phm # Charles Paige

CL

11/6/02 v call

Mr K.

Drunk & on way into n side

" " of robbery

is a police officer

He is a little to the

Does have Mordg off

re Jackson

Tapes & interview
 manipulated by the P.G. v
 → DK lessons
 + phone calls

→ Gudmund
 lessons

I need to go over the details
 with D.

Set up timeline based
 on webinars & go over
 it with ~~the~~ D

Jackson T.A.

Fingerprint in gun
 found on Jackson
 in barrel - - finger
 "Crown"

he's L.A. Jackson re 2 B
 2 of gun / voice - 2
 @ 2 by
 by Crown

He's in court
 No / made step in

Spec 2 Bumpday

CC is 4/9
 1 bill

He's

Atty

in car
 in car

Nathaniel Jackson		Ref Con	
WATS	administered	Raw Score	Verbal
Picture Completion	<u>18</u>	8	
Vocabulary	<u>18</u>	5	
Digit Symbol	<u>56</u>	6	
Similarities	<u>11</u>	5	
Block Design	<u>29</u>	7	
Arithmetic	<u>7</u>	5	
matrix Reasoning	<u>21</u>	13	
Digit Span	<u>20</u>	12	
Information	<u>6</u>	5	
Picture Arrangement	<u>15</u>	10	
Comprehension	<u>6</u>	5	
Sums		42 = IA 82	42 = FA 89
		FS + 84 = 84 IA	

N. Jackson 3/13/02
discriminate six Vocabularly ✓

4 cold 1
5 main 2
6 2
7 2

part, another day 1.

to stop 2

10 0

11 AT's time, not ch connects with a way 0

12 0

13 0

14 0

15 feeling, at 1.

16 0

17 chance 1.

18 0

19 0

20 0

21 0

22 0

23 0

Similarities

6, pygmalion 2

7 2

8 — can notice things with both 1.

9 0

10 days

11 activities

12 got clumsy

13 0

14 0

15 0

16 0 South location

Digit Spin

Backwards

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2 11

3 11

4 11

5 11

6 11

7 11

8 11

9 11

10 11

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48 11

49 11

50 11

51 11

52 11

53 11

54 11

55 11

56 11

57 11

58 11

59 11

60 11

Block days disc 3

5 2 ✓

6 14" 2

7 14" 5

8 10" 4

9 22" 4

10 57" 4

11 0

12 0

13 0

Arithmetic disc 4

5 1

6 1

7 1

8 P

9 P

10 P

11 P

12 P

Matrix Reasoning disc 4

4 2 ^{same} Information

5 3 1 5 needs temp.

6 1 1 6 am

7 5 1 7 48

8 1 1 8 —

9 2 1 9 —

10 4 1 10 Pres., he's dead

11 5 1 11 —

12 1 1 12 —

13 4 1 13 Comp

14 3 1 14 per on mail box

15 — 0 15 it's new

16 2 1 16 —

17 — 0 17 too kids got —

18 5 1 18 want to know if they can be

19 3 1 19 A does that

20 4 1 20 —

21 3 1 21 no confuses about many

22 — 0 22 different countries

23 2 1 23 functional system in it

24 — 0 24 properly together

25 — 0 25 —

26 5 1 26 —

27 — 0 27 —

28 — 0 28 —

29 — 0 29 —

30 — 0 30 —

31 — 0 31 —

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140 — 0 140 —

141 — 0 141 —

142 — 0 142 —

143 — 0 143 —

144 — 0 144 —

145 — 0 145 —

146 — 0 146 —

147 — 0 147 —

148 — 0 148 —

149 — 0 149 —

150 — 0 150 —

151 — 0 151 —

152 — 0 152 —

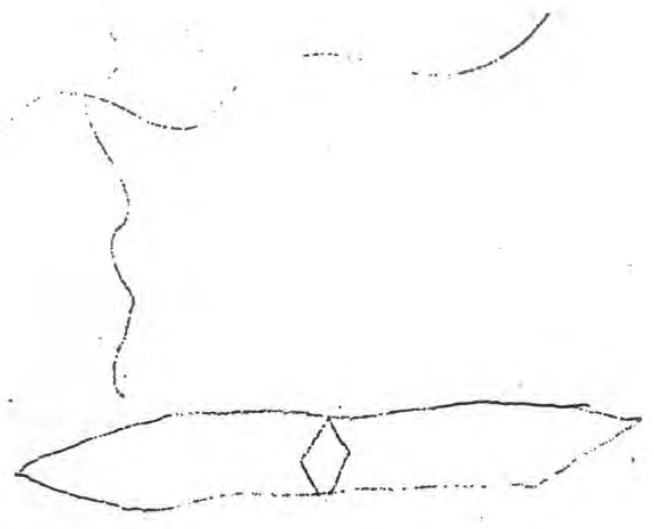
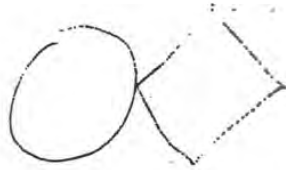
153 — 0 153 —

154 — 0 154 —

155 — 0 155 —

156 — 0 156 —

157 — 0 157 —



WRAT3

WIDE RANGE ACHIEVEMENT TEST □ REVISION 3

NAME Nate Jackson GENDER: ☐ M ☐ FDATE 7/13/02 BIRTH DATE [REDACTED] AGE 30

SCHOOL _____ GRADE _____

REFERRED BY _____ EXAMINER _____

SPELLING/A MEASURE OF WRITTEN ENCODING

by Gary S. Wilkinson

NAME _____ (1&2)

(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1. <u>APRESS</u>	<u>C</u>			16. <u>ILLOGICAL</u>	<u>C</u>			31. <u>EMPEROR</u>				
2. <u>TRAIN</u>	<u>C</u>			17. <u>FAMILLIAR</u>				32. <u>BUTTER</u>				
3. <u>SHOUT</u>	<u>C</u>			18. <u>REVERENCE</u>	<u>C</u>			33. <u>MEMORIC</u>				
4. <u>WATCH</u>	<u>C</u>			19. <u>PHYSICIAN</u>	<u>C</u>			34. _____				
5. <u>GROWN</u>	<u>C</u>			20. <u>PREJUDICE</u>	<u>C</u>			35. _____				
6. <u>MILK</u>	<u>C</u>			21. <u>APPROPRIATION</u>	<u>C</u>			36. _____				
7. <u>RESULT</u>	<u>C</u>			22. <u>NECESSITY</u>				37. _____				
8. <u>HEAVEN</u>	<u>C</u>			23. <u>COMMISSION</u>	<u>C</u>			38. _____				
9. <u>EDUCATE</u>	<u>C</u>			24. <u>ACIDIOUS</u>				39. _____				
10. <u>PURCHASE</u>	<u>C</u>			25. <u>LOQUACIOUS</u>				40. _____				
11. <u>INSTITUTE</u>	<u>C</u>			26. <u>SOVEREIGNTY</u>								
12. <u>SUGGESTION</u>	<u>C</u>			27. <u>IMPERISHABLE</u>								
13. <u>EQUIPMENT</u>	<u>C</u>			28. <u>OCCUPANCE</u>								
14. <u>MUSEUM</u>	<u>C</u>			29. <u>ARTICULAR</u>								
15. <u>OCCUPY</u>	<u>C</u>			30. <u>IMPERTEPRABLE</u>								

5/10 RULES

15
25
43

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WRAT 3 ARITHMETIC/A MEASURE OF NUMBER COMPUTATIONS

REDUCE ALL ANSWERS TO LOWEST TERMS

$2 + 1 = \underline{3} \quad C$

1

$\frac{6}{+2} \quad C$

2

$\frac{5}{-3} \quad C$

3

$4 - 1 = \underline{3} \quad C$

4

$\frac{8}{-6} \quad C$

5

$\frac{51}{+27} \quad C$

6

$\frac{497}{-176} \quad C$

7

$4 \times 2 = \underline{8} \quad C$

8

$\frac{6}{\times 3} \quad C$

9

$\frac{417}{+534} \quad C$

10

$\frac{5}{15} \quad C$

11

$\frac{452}{137} \quad C$

12

$\frac{512}{\times 3} \quad C$

13

$\frac{46}{-29} \quad C$

14

$\frac{34}{\times 21} \quad C$

$\frac{62.04}{-5.03} \quad C$

16

$\frac{98}{9)882} \quad C$

17

$1\frac{1}{2} \text{ hr} = \underline{90} \text{ min.} \quad C$

18

$\frac{401}{-74} \quad C$

19

$\frac{161 R2}{6)968} \quad C$

20

Which is more?

$\frac{7}{8} \text{ or } \frac{13}{15} \quad C$

$\frac{809}{\times 47} \quad C$

$6^2 = \underline{\quad}$

$\frac{3}{4} = \underline{\quad} \%$

$\frac{8}{9} \times \frac{1}{2} \times \frac{9}{4} = \underline{\quad}$

WRAT 3 ARITHMETIC/A MEASURE OF NUMBER COMPUTATIONS

$$\begin{array}{r} 5 \\ - 3 \frac{1}{3} \\ \hline \end{array}$$

$$\begin{array}{r} 4 \frac{5}{6} \\ 3 \frac{1}{3} \\ + 2 \frac{1}{2} \\ \hline \end{array}$$

$$\begin{array}{r} 7.96 \\ \times 30.8 \\ \hline \end{array}$$

Average:
24, 18, 21, 26, 17

Ans: _____

20% of 120 =

Ans: _____

26

27

28

29

30

Write as a decimal:

$$52 \frac{1}{2} \% = \underline{\hspace{2cm}}$$

$$(-5) (+9) =$$

Ans: _____

$$\frac{3}{8} = \underline{\hspace{1cm}} \%$$

Factor:

$$r^2 - 10r + 25 =$$

Ans: _____

$$8.2 \overline{)62.703}$$

31

32

33

34

35

Solve:

$$\frac{7 - (6 + 8)}{2} =$$

Ans: _____

$$6 \times 3 \frac{7}{8} =$$

$$\begin{array}{l} \sqrt{2ax} = 6 \\ x = \end{array}$$

Find interest on
\$1200 at 6% per
year for 2 years
compounded
annually:

Ans: _____

$$\log_{10} \left(\frac{1}{100} \right)$$

Ans: _____

36

37

38

39

40

15

21

56

WRAT 3 READING/A MEASURE OF WRITTEN DECODING**CAUTION: EXAMINER USE ONLY!****A B O S E R T H U P I V Z J Q (15)**

1 see see	2 red red	3 milk milk	4 was wuz
5 then then	6 jar jahr	7 letter let-er	8 city sit-ee
9 between bi-tween	10 cliff klif	11 stalk stawk	12 grunt grunt
13 huge hyooj	14 plot plot	15 sour sour	16 humidity hyoo-mid-i-tee
17 clarify klar-i-fi	18 residence rez-i-dens	19 urge urj	20 rancid ran-sid
21 conspiracy kon-spir-a-see	22 deny di-ni	23 quarantine kwor-an-teen	24 deteriorate di-teer-i-o-rayt
25 rudimentary roo-di-men-tē-rec	26 mosaic moh-zay-ik	27 rescinded ri-sind-ed	28 audacious aw-day-shūs
29 mitosis mi-toh-sis	30 protuberance proh-too-bē-rans	31 longevity lon-jev-i-tee	32 predilection pred-i-lek-shōn
33 regime re-zheem	34 beatify bi-at-i-fi	35 internecine in-ter-nee-seen, -nes-see	36 regicidal rej-i-si-dal
37 puerile pyoo-e-ril	38 factitious fak-tish-ūs	39 lucubration loo-kyuu-bray-shōn	<div style="border: 1px solid black; padding: 5px; text-align: center;"> 15 31 46 </div>
40 epithalamion ep-i-tha-lay-mi-on	41 inefficacious in-ei-i-kay-shūs	42 synecdoche si-nek-dō-kee	
5/10 RULES			

OBSERVATIONS/REMARKS:

Note Jackson - Turnbull County Jail
left home

3/13/02

10:10
said he just woke up

No. 1 ~~Large~~ - What is this? I think he's nervous. Does he figure out how to play it, how he gonna go about playing it. I'd not to much to say about before, can't tell you what I'm thinking. ~~I~~ ~~figure~~ I might know how to play it.

No. 2 I think she going to do. If they wouldn't feel a bit - I'd just sit in there watching. I'd what she's thinking, how close he's against to her. I'd what's on her mind.

No. 3 is a female? If they incarcerated. Thinking what they did to get in there or what they gonna do to get out.

No. 4 If she's try to stop him from leaving. If he had it to drink. If he got it in mind to do. If he goes he'll end up getting in trouble.

No. 5

He's not about up
He's wondering anybody else at home. If he's a man. ~~what~~ ~~to~~ ~~see~~ ~~what~~ ~~it~~
He'll call to go.

No. 6 If he got a job on his mind. She's try to figure out how he's gonna get back to work. Got no transportation. Or how it's gonna be on first day of job.

No. 7 Two businessmen discussing some business about a job. Gonna be making a certain point later on down the line. I don't know, she.

No. 8 What's this a gun. If two guys shot. It shot at a hospital. I'd so many different things. She'd guess or maybe.

Rorschach Interpretation Assistance Program™ Interpretive Report

by

John E. Exner, Jr., PhD, and Irving B. Weiner, PhD

Client Information

Name:	Nathaniel Jackson	Gender:	- Not specified -
Client ID:	987	Ethnicity:	African-American
Birthdate:	██████████	Age (years):	30
Marital Status:	Single	Education (years):	10

Protocol Information

Test Date:	11/12/2002
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Caveats

The Rorschach Interpretive Assistance Program (RIAP) Version 4 Plus for Windows® provides computer-generated quantitative data and narrative statements that are based on the Comprehensive System. The scoring guidelines and interpretive strategies were primarily derived from the following sources: *The Rorschach: A Comprehensive System, Volume 1: Basic Foundations* (3rd ed., Exner, 1993); *A Rorschach Workbook for the Comprehensive System* (5th ed., Exner, 2000); *The Rorschach: A Comprehensive System, Volume 3, Assessment of Children and Adolescents* (2nd ed., Exner & Weiner, 1995); and *Principles of Rorschach Interpretation* (Weiner, 1998). The RIAP4 Plus incorporates the new Comprehensive System variables included in *A Rorschach Workbook for the Comprehensive System* (5th ed., Exner, 2001). Additional interpretive information about the Comprehensive System is also presented in *A Primer for Rorschach Interpretation* (Exner, 2000). The quantitative data include a Sequence of Scores, a Structural Summary, a Constellations Table, and a Summary of Response Contents. The narrative statements consist of interpretive hypotheses derived mainly from the structural features of a Rorschach protocol and take only modest account of the thematic imagery contained in individual responses. These computer-based interpretive hypotheses identify various personality characteristics associated with quantitative aspects of Rorschach data and can contribute to forming valid and comprehensive impressions of an individual's psychological functioning. However, the narrative statements produced by the RIAP4 Plus for Windows describe the implications of Rorschach findings among people in general, and they do not necessarily apply in all respects to the functioning of any one person. To ensure a thorough and accurate description of a particular individual's personality characteristics and behavioral tendencies, examiners should consider qualitative as well as quantitative features of the person's Rorschach protocol, and they should also judge the applicability of RIAP4 interpretive hypotheses in light of information from other sources concerning the person's clinical status and past and present life circumstances. This interpretive assistance program is intended for use by or under the supervision of qualified professional persons with training and experience in Rorschach assessment. Utilization of the RIAP4 in the absence of such qualifications may violate ethical guidelines for providing services only within the boundaries of one's competence.

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Version: 4.52.127

NATHANIEL JACKSON v. WARDEN
CASE NO. 4:07-cv-0880
SUPP. APPENDIX - Page 5627

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Sequence of Scores

Card	Resp. No	Location and DQ	Loc. No.	Determinant(s) and Form Quality	(2)	Content(s)	Pop	Z Score	Special Scores
I	1	Wo	1	F-		Sc		1.0	INC
	2	Do		Mpo		Hd			PHR
	3	Ddo		Fu		Sc			
	4	Ddo		Fo		Sc			
II	5	Do		F-	2	A			
III	6	Do		Mpo	2	H	P		GHR
IV	7	Wo	1	Fo		(A)		2.0	
V	8	Wo	1	Fo		A	P	1.0	
	9	Wo	1	Fo		A	P	1.0	PSV
VI	10	Wo	1	Fo		Ad	P	2.5	
VII	11	Do		Mpo	2	Hd	P		GHR
	12	Do		Fo	2	Hd			PHR
VIII	13	Do		FMa-	2	A			
IX	14	Do		Fo	2	(H)			GHR
X	15	Do		Fo	2	A	P		

Summary of Approach

I: W.D.Dd.Dd	VI: W
II: D	VII: D.D
III: D	VIII: D
IV: W	IX: D
V: W.W	X: D

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Structural Summary

Location Features	
ZI	= 5
ZSum	= 7.5
ZEst	= 13.5
W	= 5
(Wv	= 0)
D	= 8
W+D	= 13
Dd	= 2
S	= 0

DQ	
	(FO)
+	0 (0)
o	15 (3)
v	0 (0)
v	0 (0)

Form Quality		
	FOx	MOual
+	0	0
o	11	3
u	1	0
	3	0
none	0	0

Determinants	
Blends	Single
M	= 3
FM	= 1
m	= 0
FG	= 0
CF	= 0
C	= 0
Ca	= 0
FC	= 0
CF	= 0
C	= 0
FT	= 0
IF	= 0
IF	= 0
FV	= 0
VF	= 0
VF	= 0
FY	= 0
YE	= 0
Y	= 0
F	= 0
IF	= 0
FD	= 0
F	= 11
(2)	= 7

Contents	
H	= 1
(H)	= 1
Hd	= 3
(Hd)	= 0
Hx	= 0
A	= 5
(A)	= 1
Ad	= 1
(Ad)	= 0
An	= 0
Ar	= 0
Av	= 0
Bl	= 0
Bu	= 0
Cg	= 0
Cf	= 0
Ex	= 0
Fd	= 0
Fi	= 0
Ge	= 0
Hh	= 0
Is	= 0
Na	= 0
Sc	= 3
Sx	= 0
Xy	= 0
Idio	= 0

S-Constellation	
<input type="checkbox"/> FV+VF+V+FD > 2	
<input type="checkbox"/> Col Shd Blends > 0	
<input checked="" type="checkbox"/> Ego < 31 or > 44	
<input type="checkbox"/> MOR > 3	
<input checked="" type="checkbox"/> ZI > 3.5	
<input type="checkbox"/> S > EA	
<input type="checkbox"/> C > C > FC	
<input type="checkbox"/> S > 1	
<input type="checkbox"/> P < 3 or > 8	
<input checked="" type="checkbox"/> Pure H < 2	
<input checked="" type="checkbox"/> R < 17	
Total	

Special Scores	
DV	= 0 x1 0 x2
INC	= 1 x2 0 x4
DR	= 0 x3 0 x6
FAB	= 0 x4 0 x7
ALOG	= 0 x5
CON	= 0 x7
Raw Sum6	= 1
Weid Sum6	= 2
AB	= 0 GHR = 1
AG	= 0 PHR = 2
COP	= 0 MOR = 0
CP	= 0 PER = 0
PSV	= 1

RATIOS, PERCENTAGES, AND DERIVATIONS

R = 15	L = 2.75	
EB = 3	EA = 3	EBPr = N/A
eb = 1	es = 1	D = 0
	Adj es = 1	Adj D = 0
FM = 1	SumC = 0	SumI = 0
m = 0	SumV = 0	SumY = 0

FC-CF-C	= 0.0
Pure C	= 0.0
SumC	= 0.0
WSumC	= 0.0
Ar	= 0.25
S	= 0
Blends-P	= 0.15
CP	= 0

INTERPERSONAL

COP	= 0	AG	= 0
GHR-PHR	= 3.2		
ap	= 1.3		
Food	= 0		
SumIs	= 0		
Human Content	= 5		
Pure H	= 1		
PER	= 0		
Isolation Index	= 0.00		

IDEATION

ap	= 1.3	Sum6	= 1
MaMo	= 0.3	Lx2	= 0
ZAB+(Ar+Av)	= 0	WSum6	= 2
MOR	= 0	M	= 0
		M none	= 0

MEDIATION

XA%	= 0.80
WDA%	= 0.77
X%	= 0.20
S	= 0
P	= 6
Xx%	= 0.73
Xy%	= 0.07

PROCESSING

ZI	= 5
W+D	= 13.2
W-M	= 5.3
Zd	= 6.0
PSV	= 1
DQ	= 0
DQr	= 0

SELF-PERCEPTION

3x(ZYR2)	= 0.47
FyH	= 0
SumV	= 0
FD	= 0
Ar+Xy	= 0
MOR	= 0
H-(H)-(Hd)-(Hd)	= 1.4

PTI = 0 ☐ DEPI = 1 ☒ CDI = 4 ☐ S-CON = 4 ☐ HVI = No ☐ OBS = No

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CONSTELLATIONS TABLE

S-Constellation (Suicide Potential)	PTI (Perceptual-Thinking Index)
<input checked="" type="checkbox"/> Positive if 8 or more conditions are true. NOTE: Applicable only for subjects over 14 years old. <input type="checkbox"/> $FV + VF + V + FD [0] > 2$ <input type="checkbox"/> Col-Shd Blends [0] > 0 <input checked="" type="checkbox"/> $Ego [0.47] < .51$ or $> .44$ <input type="checkbox"/> $MOR [0] > 3$ <input checked="" type="checkbox"/> $Zd [-6.0] > -3.5$ <input type="checkbox"/> $CA [1] > EA [3.0]$ <input type="checkbox"/> $CF + C [0] > FC [0]$ <input type="checkbox"/> $X + \% [0.73] < .70$ <input type="checkbox"/> $S [0] > 3$ <input type="checkbox"/> $P [6] < 3$ or > 8 <input checked="" type="checkbox"/> Pure H [1] < 2 <input checked="" type="checkbox"/> $R [15] < 17$ Total:	<input type="checkbox"/> $XA \% [0.80] < 0.70$ and $WDA \% [0.77] < 0.75$ <input type="checkbox"/> $X + \% [0.20] > 0.29$ <input type="checkbox"/> (Sum Level 2 Special Scores [0] > 2) and $FAB2 [0] < 0$ <input type="checkbox"/> $(R [15] < 17)$ and $(WSum6 [2] > 12)$ or $(R [15] > 16)$ and $(WSum6 [2] > 17)$ <input type="checkbox"/> $(M [10] > 1)$ or $(X + \% [0.20] > 0.40)$ Total:
DEPI (Depression Index) <input checked="" type="checkbox"/> Positive if 5 or more conditions are true. <input type="checkbox"/> $(FV + VF + V [0] > 0)$ or $(ED [0] > 2)$ <input type="checkbox"/> (Col-Shd Blends [0] > 0) or $(S [0] > 2)$ <input checked="" type="checkbox"/> $(3r + (2)R [0.47] > 0.44$ and $Fr + rF [0] = 0)$ or $(3r + (2)R [0.47] < 0.33)$ <input checked="" type="checkbox"/> $(Af [0.25] < 0.46)$ or $(Blends [0] < 4)$ <input type="checkbox"/> (SumShading [0] > FM - m [1]) or $(SumC [0] > 2)$ <input type="checkbox"/> $(MOR [0] > 2)$ or $(2xAB + Ar + Ay [0] > 3)$ <input checked="" type="checkbox"/> $(COP [0] < 2)$ or $(BI + 2xCH + G - FL + 2xNA) / R [0.00] > 0.24$ Total:	CDI (Coping Deficit Index) <input checked="" type="checkbox"/> Positive if 4 or more conditions are true. <input checked="" type="checkbox"/> $(EA [3.0] < 6)$ or $(AdjD [0] < 0)$ <input checked="" type="checkbox"/> $(COP [0] < 2)$ and $(AG [0] < 2)$ <input checked="" type="checkbox"/> (Weighted Sum C [0.0] < 2.5) or $(Af [0.25] < 0.46)$ <input checked="" type="checkbox"/> (Passive [3] > Active + 1 [2]) or $(Pure H [1] < 2)$ <input type="checkbox"/> $(Sum T [0] > 1)$ or $(Isolate/R [0.00] > 0.24)$ or $(Food [0] > 0)$ Total:
HVI (Hypervigilance Index) <input checked="" type="checkbox"/> Positive if condition 1 is true and at least 4 of the others are true. <input checked="" type="checkbox"/> (1) $FT + TF + T [0] = 0$ <input type="checkbox"/> (2) $ZI [5] > 12$ <input type="checkbox"/> (3) $Zd [-6.0] > -3.5$ <input type="checkbox"/> (4) $S [0] > 3$ <input type="checkbox"/> (5) $H2 (H) + Hd + (Hd) [5] < 6$ <input type="checkbox"/> (6) $(H) + (A) + (Hd) + (Ad) [2] > 2$ <input checked="" type="checkbox"/> (7) $H2 (A) + Hd + Ad [8.4] < 4.1$ <input type="checkbox"/> (8) $C2 [0] > 3$	OBS (Obsessive Style Index) <input type="checkbox"/> (1) $Dd [2] > 3$ <input type="checkbox"/> (2) $ZI [5] > 12$ <input type="checkbox"/> (3) $Zd [-6.0] > -3.0$ <input type="checkbox"/> (4) Populars [6] > 7 <input type="checkbox"/> (5) $FQ [0] > 1$ <input checked="" type="checkbox"/> Positive if one or more is true. <input type="checkbox"/> Conditions 1 to 5 are all true. <input type="checkbox"/> Two or more of 1 to 4 are true and $FO [10] > 3$ <input type="checkbox"/> 3 or more of 1 to 5 are true and $X + \% [0.73] > 0.89$ <input type="checkbox"/> $(FO [10] > 3)$ and $X + \% [0.73] > 0.89$

NOTE: "*" indicates a cutoff that has been adjusted for age norms.

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Interpretive Hypotheses

The first step in considering the possible interpretive significance of Rorschach findings consists of determining whether a protocol is sufficiently long (more than 13 responses) and complete (no rejections) to be useful, that is, to provide reliable data and support valid inferences. Additionally in this initial process, concerns should be raised if elevations in the S-CON suggest suicide potential. Interpretive cautions may be raised if highly unusual features of the data suggest efforts to simulate serious psychological disturbance.

This record contains a sufficient number of responses to provide reliable information and to support valid interpretations. However, there are also indications of situational guardedness on his/her part and a reluctance to be forthcoming, and he/she has probably not revealed a full measure of either his/her coping capacities or his/her adaptive difficulties. Positive findings in such guarded protocols (i.e., unusual score elevations) can be taken as reliable indicators of the personality assets and limitations with which they are associated, but negative findings (i.e., unusually low scores and indices based on low scores) may be misleading and should be interpreted cautiously, if at all.

Constellations

PTI = 0	<input type="checkbox"/> DEPI = 3	<input checked="" type="checkbox"/> CDI = 4	<input type="checkbox"/> S-CON = 4	<input type="checkbox"/> HVI = No	<input type="checkbox"/> OBS = No
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Interpretive Search Strategy

Positive Key Variable(s)	Interpretive Search Strategy
1. CDI > 3 and EA Low	Controls > Affect > Self-Perception > Interpersonal Perception > Processing > Mediation > Ideation

Capacity for Control and Tolerance for Stress

EB = 3 : 0.0	EA = 3.0	D = 0
eb = 1 : 0	es = 1	Adj es = 1
FM = 1	C' = 0	T = 0
m = 0	V = 0	Y = 0
<input checked="" type="checkbox"/> CDI = 4		

This cluster of variables provides information about a person's psychological resources, ability to manage stress, and capacity to cope consistently and effectively with life events. The relevant Rorschach findings help to identify (a) the extent of adaptive capacity people can muster in planning and implementing ways of dealing with their everyday experiences, (b) the amount and kinds of stressful demands currently present in their lives, (c) how well they can tolerate their level of stress without becoming unduly upset and losing self-control, and (d) the adequacy with which they can bring a cohesive personality style to bear in managing their affairs. Sufficient resources to minimize subjectively felt distress and maintain a consistent coping style promote psychological well-being and successful adaptation to life demands. Conversely, the triumvirate of inadequate resources, excessive experienced stress, and inconsistent coping efforts typically eventuate in lives marked by distress, disappointment, and limited accomplishment.

1. The client appears to be working very hard to keep emotions out of his/her life. The client's determination to avoid affect could constitute a defensive effort on his/her part, intended to keep his/her feelings to himself/herself and to provide insulation against the feelings of others, or it could reflect a basic incapacity to experience and express feelings adaptively. Either way, the amount of effort he/she is putting into emotional containment is likely to detract from his/her ability to think clearly and exercise good judgment, and, as a result, he/she may also suffer from low stress tolerance and limited self-control.

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Affect

<input type="checkbox"/> DEPI = 3	EBPer = N/A	Blends There are no blends
EB = 3 : 0.0	FC:CF+C = 0 : 0	
eb = 1 : 0	Pure C = 0	
	SumC':WSumC = 0 : 0.0	
C' = 0 T = 0	Afr = 0.25	
V = 0 Y = 0	2AB+Art+Ay = 0	
	S = 0	
	(S to I, II, and III = 0)	
	Blends/R = 0 : 15	
	CP = 0	

This cluster of variables provides information about the manner and comfort with which people process emotional experience, with specific respect to how they deal with feelings arising from within themselves and how they respond to the feelings of others and to emotionally charged situations in general. The relevant Rorschach findings help to identify whether people have adequate capacities to experience and express emotion sufficiently, pleasurably, and in moderation, or whether instead they are prone to process affect in a constricted, dysphoric, or overly intense manner that leads to adjustment difficulties.

2. As noted previously, he/she appears to be working very hard to keep emotions out of his/her life. The amount of effort he/she is putting into emotional containment is likely to detract from his/her ability to think clearly and exercise good judgment, and he/she may suffer as a result from low stress tolerance and limited self-control.

3. The client appears much less willing than most people to process emotional stimulation. Because of his/her aversion to becoming engaged in affectively charged situations, he/she is at risk for being socially and emotionally withdrawn. Reluctance to process affect does not preclude a person's being interested in and capable of forming attachments to other people. However, the emergence of strong feelings often leads people like him/her to break off an interpersonal interaction, and their aversion to emotionality may limit their social attractiveness.

4. As discussed in the Ideation cluster of variables, he/she is more inclined than most people to deal with feelings on an intellectual level, rather than directly, as a means of minimizing their impact.

Self-Perception

R = 15	<input type="checkbox"/> OBS = No	<input type="checkbox"/> HVI = No		
3r+(2)/R = 0.47	FD = 0	MOR = 0	Hx = 0	An+Xy = 0
Fr+rF = 0	V = 0	T = 0	Sx = 0	
H : (H)+Hd+(Hd) = 1 : 4				
Responses to be read				
MOR Responses	FQ- Responses	M Responses	FM Responses	m Responses
None	1, 5, 13	2, 6, 11	13	None

This cluster of variables provides information about how people view themselves, particularly with respect to their level of self-esteem, the extent of their self-awareness, and the nature of their self-image. The relevant Rorschach findings help to identify whether people feel satisfied and comfortable with themselves or are burdened by negative self-attitudes, whether they are excessively preoccupied with or paying little attention to themselves, and whether they have a clear and stable sense of their identity or an uncertain and unrealistic grasp of the kind of person they are.

5. This person tends to focus on himself/herself more than most people do, at the expense of paying adequate attention to others. This degree of self-centeredness is usually associated with highly positive estimates of one's personal worth. In this instance, however, there is little indication that his/her self-focusing is giving him/her much pleasure. On the contrary, it is likely that his/her inordinate preoccupation with himself/herself is more a source of dissatisfaction than of enjoyment.

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6. Distorted form responses (FQ-) usually involve some projection of a person's underlying attitudes and concerns. Responses 1, 5, and 13 are perceptually inaccurate and should be examined for the possible implications of their thematic imagery.

7. Movement responses often contain projected self and object representations that provide clues to people's underlying concepts of themselves and other people. Responses 2, 6, and 11 in this record include M and response 13 includes FM. The imagery in these responses should be examined for the possible implications of its thematic content.

Interpersonal Perception

<input checked="" type="checkbox"/> CDI = 4	a:p = 1 : 3	T = 0	EA = 3.0	EB = 3 : 0	
<input type="checkbox"/> HVI = No	Food = 0	PER = 0	COP = 0	AG = 0	S = 0
Sum H = 5	H:(H)+Hd+(Hd) = 1 : 4	Pure H = 1			
GHR:PHR = 3 : 2					
Afr = 0.25	Isolate/R = 0.00		C+T+V+Y = 0		
Responses to be read					
<i>M with Pair</i>	<i>FM with Pair</i>	<i>m with Pair</i>	<i>Human Contents</i>		
6, 11	13	None	2, 6, 11, 12, 14		

This cluster of variables provides information about how people relate to others, particularly with respect to their attitudes toward other people, the degree of interaction they have with them, and the manner in which they approach and manage interpersonal attachments. The relevant Rorschach findings help to identify whether people (a) are able to sustain a reasonable level of interpersonal interest, involvement, and comfort, or are instead inclined to be disinterested, disengaged, or ill at ease in social situations; (b) anticipate intimacy and security in their interpersonal interactions, or tend instead to regard interpersonal closeness as threatening to their well-being and prefer to keep their distance from others; (c) can strike an adaptive balance in relating to people between collaboration and acquiescence on the one hand and competitiveness and assertiveness on the other hand, or tend instead to become excessively subservient or domineering in their interpersonal relationships; and (d) perceive people and social situations accurately and with empathy, or instead are prone to misinterpreting the motives of others and misconstruing the implications of interpersonal events.

8. This person appears to have limited ability to manage interpersonal relationships in a comfortable and rewarding manner. The client may conduct himself/herself appropriately in social situations and even at times make an initially favorable impression on other people. Nevertheless, as a consequence of inadequate social skills that may not always be apparent, he/she tends to opt for superficial and transient relationships with others and to back away from involved or prolonged relationships out of concern that they will make more demands on him/her than he/she can handle. In addition, his/her social ineptness may make him/her vulnerable to experiencing embarrassment and failure in social situations and to being ignored or rejected by others, who see him/her as a distant, guarded, and ineffective person. Individuals with this pattern of deficient coping can frequently benefit from treatment focused on interpersonal anxiety reduction and social skills training.

9. The client gives evidence of being behaviorally passive and acquiescent in his/her interpersonal relationships. Such people are inclined to subjugate their needs and wishes to those of others, to defer to whatever choices others prefer, and to accommodate their actions to satisfy the requests of those around them. Often individuals who are passive in this way lead their lives at the pleasure of others on whom they depend. They are more comfortable being followers than leaders, they shrink from taking the initiative, and they feel most comfortable when other people make their decisions for them, removing from their shoulders the responsibility for these decisions.

10. This person shows little interest in or expectation of engaging in collaborative or competitive relationships with other people. Because of his/her seeming indifference or aversion to interpersonal involvement, he/she is likely to strike others as being distant and aloof. Although he/she may not be actively disliked by members of social groups to which he/she belongs, he/she has limited prospects for becoming socially popular or well-liked.

11. This person is likely to demonstrate adaptive interpersonal behavior, most of the time.

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12. Movement responses that include a pair often contain projected object representations that provide clues to an individual's underlying concepts of people and how they are likely to interact. Responses 6 and 11 in this record involve M with a pair and response 13 involves FM with a pair. The imagery in these responses should be examined for the possible implications of its thematic content.

13. The nouns that are used to identify human content and the adjectives that are used to describe human or human-like figures often reveal underlying aspects of an individual's concepts of and attitudes toward people. Responses 2, 6, 11, 12, and 14 in this record involve human content and should be examined for the possible implications of their thematic imagery.

Information Processing

R	= 15	L	= 2.75		
EB	= 3 : 0.0	W:D:Dd	= 5 : 8 : 2	Zd	= -6.0
Zf	= 5	W:M	= 5 : 3	PSV	= 1
<input type="checkbox"/> HVI	= No	<input type="checkbox"/> OBS	= No	DQ+	= 0
				DQv/+	= 0
				DQv	= 0

This cluster of variables provides information about the manner in which people focus their attention on events in their lives and how they organize the perceptions that enter their awareness. Successful adaptation is promoted by openness to experience and efficient organization of the impressions one forms, whereas viewing the world with a narrow or disorganized frame of reference makes a person susceptible to various types of adjustment difficulty.

14. As noted previously in considering the validity of this record, his/her elevated Lambda in this valid but short record of fewer than 17 responses suggests situational guardedness on his/her part and a reluctance to be forthcoming. Accordingly, the limited openness to experience and narrow frame of reference that would otherwise be indicated by a high Lambda may not in his/her case accurately characterize the manner in which he/she attends to experience when he/she is not situationally guarded.

15. In attending to his/her experience, he/she tends to take in too little information and to examine his/her experience less thoroughly than most people would consider adequate. As a consequence, he/she is at risk for coming to conclusions hastily, after only cursory attention to relevant considerations; for working carelessly and feeling satisfied with final products that do not reflect the full measure of his/her ability; and for scanning situations in a cursory manner that takes insufficient account of considerations he/she should notice. This predilection for seeking out and being satisfied with only minimal amounts of information defines a pattern of underincorporation that promotes rapid decision making and speedy completion of tasks, but often at the expense of ill-considered conclusions and inferior products. By taking inadequate account of information he/she could easily process, then, this person is at risk for errors of oversight in what he/she chooses to think and do and for lack of accomplishment in what he/she attempts to achieve.

16. The client does not attend very thoroughly to his/her experience and appears to have only limited motivation to grasp complex concepts and attempt ambitious undertakings. This finding is not surprising in light of his/her stylistic preference to keep his/her focus of attention narrow and his/her solutions to problems simple and uncomplicated. The client's narrowness in this regard, together with his/her aversion to complexity and ambiguity, increases the likelihood of his/her behaving at times in ways that take insufficient account of propriety and social expectation.

17. The quality of his/her efforts to focus his/her attention with precision and to synthesize aspects of his/her experience falls below that of most people. This finding is not uncommon among individuals whose cognitive capacities are limited. In the presence of average intellectual ability and otherwise unimpaired cognitive capacities, however, it suggests a simplistic way of looking at the world in which little energy is devoted to seeking out or recognizing complex relationships between events. The client's preference for maintaining a narrow frame of reference and his/her tendency to oversimplify his/her experience are probably contributing to the below average quality of his/her information processing.

18. This person has given a Perseveration response which should be examined to determine whether it is a *Within card* Perseveration. If so, he/she appears to have some occasional difficulty in shifting his/her attention from one matter to another. The client does not have a substantial problem in this regard, and it seems to occur as a result of his/her preferring not to shift set, rather than his/her being unable to do so. Nevertheless, his/her lack of mental flexibility may detract from his/her ability to pay attention to events.

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Cognitive Mediation

R = 15 Lambda = 2.75 P = 6 FQx+ = 0 FQxo = 11 FQxu = 1 FQx- = 3 FQx none = 0 Pure C = 0 Pure Y = 0 Pure C' = 0 Pure T = 0			<input type="checkbox"/> OBS = No WDA% = 0.77 XA% = 0.80 X+% = 0.73 F+% = 0.73 X-% = 0.20 S-% = 0.00 Xu% = 0.07 M- = 0 M none = 0	Minus Responses 1, 5, 13
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This cluster of variables provides information about the manner in which people perceive their environment, particularly with respect to whether they perceive people and events the way most other people do. Being able to perceive one's experience realistically and with a modicum of conventionality constitutes a personality strength that typically contributes to good adjustment. Conversely, difficulties in seeing themselves and their world in a realistic light is a personality limitation that often causes adjustment problems, and the same is true for inclinations to be unusually conforming or highly idiosyncratic in forming impressions of one's experience.

19. The client is about as capable as most people of recognizing conventional modes of response. Although this ability and his/her willingness to recognize obvious aspects of reality constitute personality assets, they do not preclude the possibility of his/her distorting less obvious aspects of reality or choosing to see the world in unconventional ways.

20. The client demonstrates generally good ability to form accurate impressions of himself/herself, to interpret the actions and intentions of others without distortion, and to perceive events conventionally without sacrificing his/her individuality. The client is additionally capable of anticipating adequately the consequences of his/her own actions and of recognizing the boundaries of appropriate behavior in various kinds of situations. These indications of good reality testing and sound judgment identify a substantial personality strength that may not preclude his/her encountering adjustment difficulties, but that minimizes their likelihood of occurrence and improves his/her prospects for overcoming them should they arise. However, he/she tends to be less accurate in his/her perceptions when forming impressions of uncommon and unclear situations than when dealing with ordinary and obvious situations. The client's good grasp of reality is nevertheless bolstered by his/her ability to recognize and endorse obvious clues to conventional modes of response.

Ideation

R = 15	L = 2.75	PTI = 0	<input type="checkbox"/> DEPI = 3	Critical Special Scores	
EB = 3 : 0.0	EBPer = N/A	DV = 0	DV2 = 0	INC = 1	INC2 = 0
eb = 1 : 0	MOR = 0	DR = 0	DR2 = 0	FAB = 0	FAB2 = 0
FM = 1	m = 0	ALOG = 0	CONTAM = 0	Raw Sum6 = 1	Wgt Sum6 = 2
a:p = 1 : 3	M- = 0				
Ma:Mp = 0 : 3	M none = 0				
	2AB+Art+Ay = 0				
Responses with Critical Special Scores:					
1					

This cluster of variables provides information about the way people think about the experiences they have and the impressions they form of events in their lives. People adapt best when they are able to think about their experiences and impressions in a logical, coherent, flexible, constructive, and only moderately preoccupying manner. Conversely, being inclined to illogical, incoherent, inflexible, overly fanciful, or excessively preoccupying ways of thinking constitutes a personality liability that interferes with psychological adjustment.

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21. The client is less likely than most people to experience intrusive ideation over which he/she has little control, and he/she is relatively unburdened by either (a) a disconcerting awareness of needs that are not being met, or (b) worrisome thoughts about being unable to prevent other people or events from determining his/her destiny. Although this relative lack of troubling ideation may spare him/her some stress, it may also reflect some emptiness and indifference in his/her life. The possibility should be considered that he/she is a relatively unmotivated, undemanding, and easily satisfied individual who seldom experiences needs or wants, rarely entertains hopes and dreams, and remains bland and unconcerned even in unwelcome circumstances. Another possibility suggested by the data in his/her case involves neither limited need arousal nor self-denial, but instead an orientation toward gratifying needs as soon as they arise, without allowing them to linger unmet as a source of intrusive ideational concerns. Should this be true, he/she may regularly opt for getting his/her needs met rather than worrying about them. Consequently engaging in self-gratifying behaviors without sufficient delay or restraint could contribute to various kinds of conduct problems and actions to which others take exception or offense.

22. This person shows a marked tendency to deal with challenging situations in an escapist manner in which he/she subjugates reality to fantasy. Instead of thinking through what he/she can or should do about situations that call for making decisions or taking actions, he/she imagines how other people or fortuitous events will make these decisions for him/her, thus eliminating the need for him/her to do anything. Such withdrawal into imagination may provide temporary relief from worry and responsibility, but at the expense of decreasing the prospects for getting his/her needs met. People who abuse fantasy in this way may additionally don a mantle of helplessness and dependency that makes them vulnerable to being manipulated by those whom they imagine to be their source of salvation.

23. Generally speaking, he/she displays adaptive capacity to think logically and coherently. The client is as capable as most people of coming to reasonable conclusions about relationships between events and of maintaining a connected flow of associations in which ideas follow each other in a comprehensible manner.

Overview

This person has produced a valid record that should ordinarily provide reliable information about his/her personality functioning. However, he/she shows some situational guardedness and a reluctance to be forthcoming, and his/her responses may accordingly not reveal the full extent of either his/her coping capacities or his/her adjustment difficulties.

The client demonstrates generally good abilities to perceive events conventionally without sacrificing his/her individuality, to form accurate impressions of himself/herself, to interpret the actions and intentions of others without distortion, to anticipate adequately the consequences of his/her own actions, and to construe correctly what constitutes appropriate behavior in various kinds of situations. The client's good reality testing constitutes a substantial personality strength.

This person is inclined to examine his/her experience in a cursory manner and to take inadequate account of information he/she should consider. The client is consequently at risk for being hasty and careless in the way he/she makes decisions and works on tasks.

The client displays adaptive capacity to think logically and coherently, being for the most part as capable as most people of coming to reasonable conclusions about relationships between events and of maintaining a connected flow of associations in which ideas follow each other in a comprehensible manner.

This person appears to be less capable than most people of dealing effectively with everyday experience, especially with respect to social situations. The client's limited social skills are likely to be contributing to awkward, inept, or inappropriate management of interpersonal relationships.

This person gives evidence of limited capacity to form close attachments to other people. Although he/she may not necessarily avoid interpersonal relationships, these relationships tend to be psychologically at arm's length rather than up close.

This person is likely to be behaviorally passive and acquiescent in his/her interpersonal relationships, preferring to let others take the initiative and make decisions.

This person is likely, for the most part, to engage in adaptive interpersonal behaviors.

End of Report

Version: 4.52.127

Extended Score Report

MMPI-2™

Minnesota Multiphasic Personality Inventory-2™

ID Number 5

Nathaniel Jackson

Male

Age 30

Date Assessed 4/09/2002

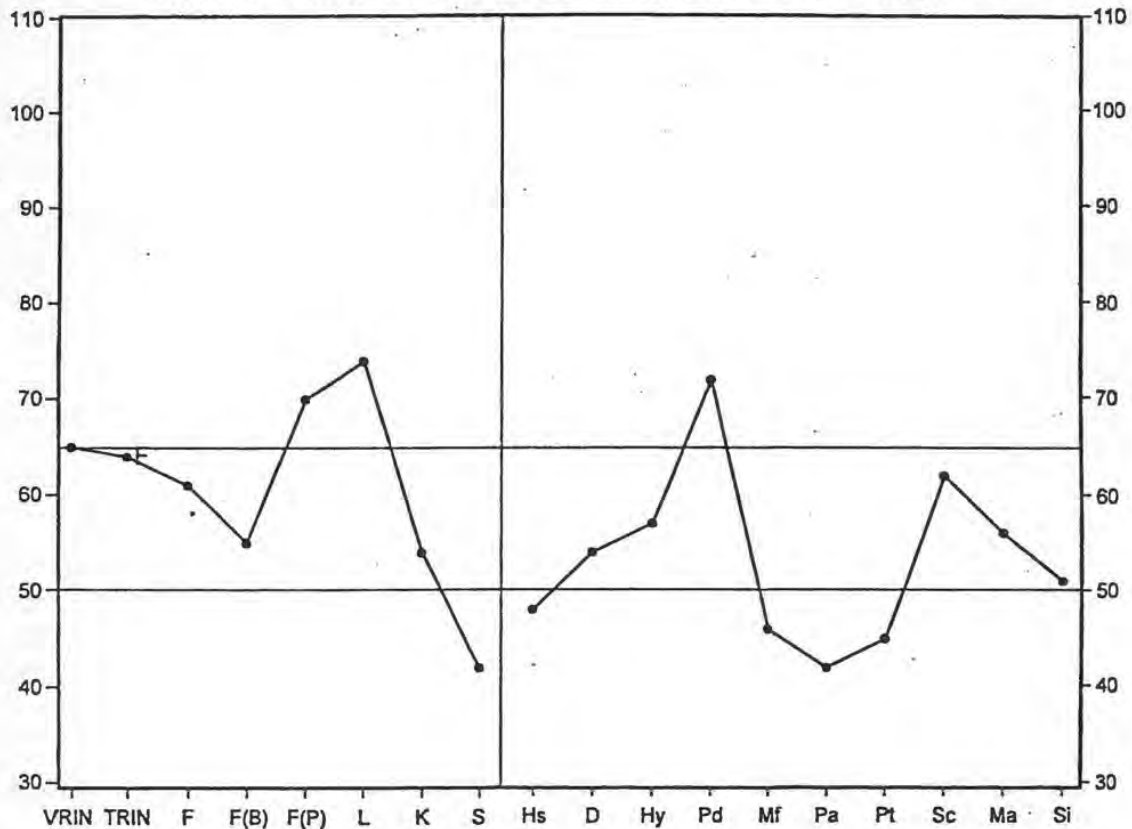
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[3.1 / 5.04 / 1.0]

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MMPI-2 VALIDITY AND CLINICAL Scales PROFILE



Raw Score: 9 7 8 3 4 9 17 18 3 20 24 25 24 8 7 16 20 26

K Correction: 9 7 17 17 3

T Score: 65 64F 61 55 70 74 54 42 48 54 57 72 46 42 45 62 56 51

Response %: 98 100 100 100 100 100 100 100 100 100 100 100 100 100 100 100 100

Cannot Say (Raw): 2

F-K (Raw): -9

Welsh Code: 4'+8-3920/1576: L'+F-K/

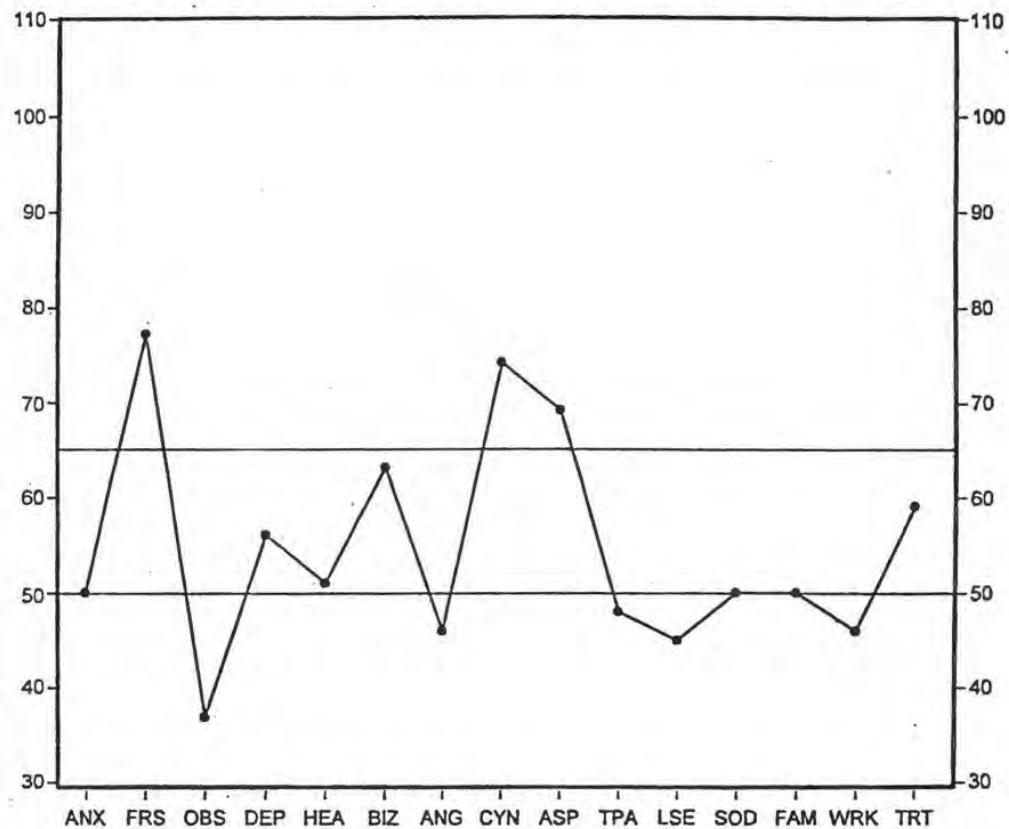
Percent True: 41

Percent False: 59

Profile Elevation: 54.50

MMPI-2™
ID 5Extended Score Report
Page 3

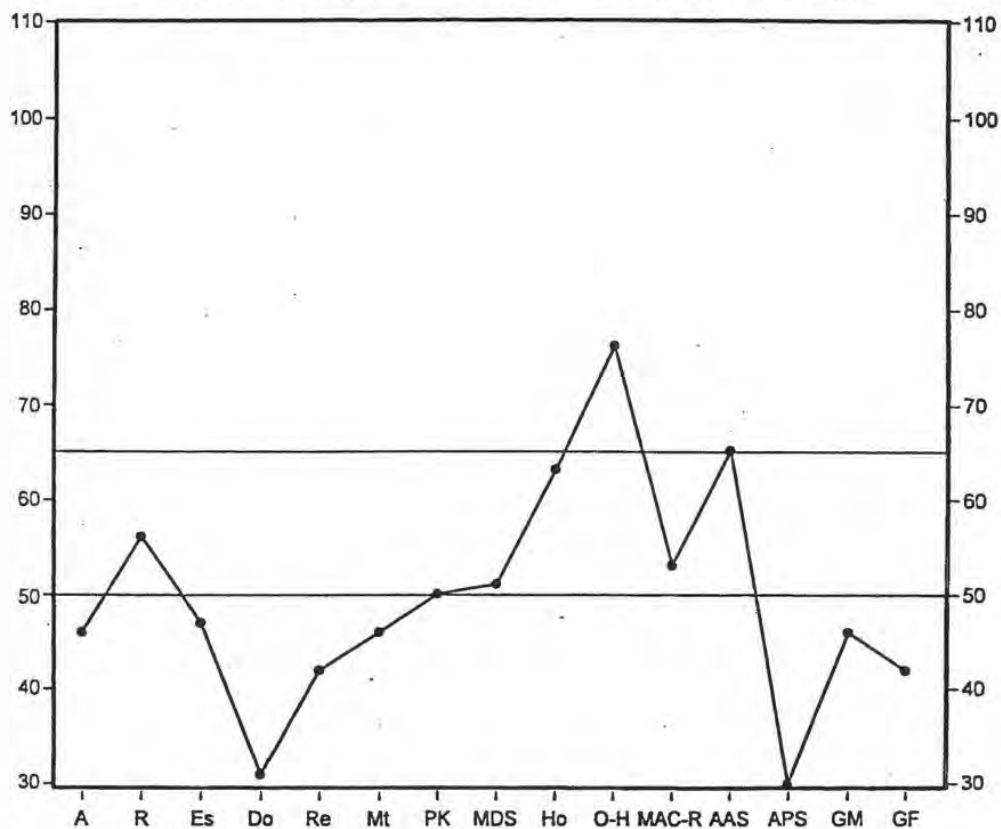
MMPI-2 CONTENT SCALES PROFILE



Raw Score:	5	12	1	7	5	6	4	20	15	8	2	8	5	5	8
T Score:	50	77	37	56	51	63	46	74	69	48	45	50	50	46	59
Response %:	96	100	100	100	100	100	100	100	100	100	96	100	100	100	100

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Page 4

MMPI-2 SUPPLEMENTARY SCALES PROFILE

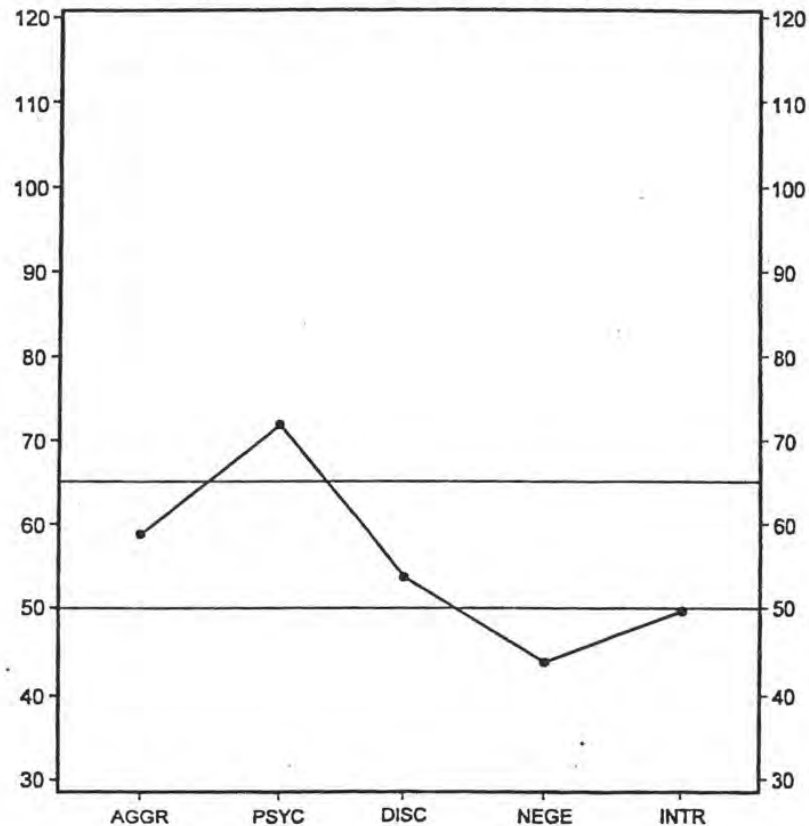


Raw Score:	7	18	36	11	17	9	8	3	29	20	22	6	14	36	24
T Score:	46	56	47	31	42	46	50	51	63	76	53	65	30	46	42
Response %:	95	100	100	100	100	98	100	100	100	100	100	100	100	100	100

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Page 5

MMPI-2 PSY-5 SCALES PROFILE



Raw Score:	11	10	16	6	11
T Score:	59	72	54	44	50
Response %:	100	100	100	100	100

MMPI-2™
ID 5Extended Score Report
Page 6**HARRIS-LINGOES SUBSCALES**

(to be used as an aid in interpreting the parent scale)

	Raw Score	T Score	Resp %
Depression Subscales			
Subjective Depression (D1)	7	50	100
Psychomotor Retardation (D2)	6	54	100
Physical Malfunctioning (D3)	3	51	100
Mental Dullness (D4)	3	53	100
Brooding (D5)	2	51	100
Hysteria Subscales			
Denial of Social Anxiety (Hy1)	6	61	100
Need for Affection (Hy2)	7	51	100
Lassitude-Malaise (Hy3)	2	48	100
Somatic Complaints (Hy4)	3	52	100
Inhibition of Aggression (Hy5)	5	63	100
Psychopathic Deviate Subscales			
Familial Discord (Pd1)	1	45	100
Authority Problems (Pd2)	5	60	100
Social Imperturbability (Pd3)	6	63	100
Social Alienation (Pd4)	5	56	100
Self-Alienation (Pd5)	6	63	100
Paranoia Subscales			
Persecutory Ideas (Pa1)	5	70	100
Poignancy (Pa2)	1	41	100
Naivete (Pa3)	1	32	100
Schizophrenia Subscales			
Social Alienation (Sc1)	5	59	100
Emotional Alienation (Sc2)	3	69	100
Lack of Ego Mastery, Cognitive (Sc3)	4	66	100
Lack of Ego Mastery, Conative (Sc4)	4	60	100
Lack of Ego Mastery, Defective Inhibition (Sc5)	0	40	100
Bizarre Sensory Experiences (Sc6)	2	51	100
Hypomania Subscales			
Amorality (Ma1)	4	66	100
Psychomotor Acceleration (Ma2)	3	39	100
Imperturbability (Ma3)	7	71	100
Ego Inflation (Ma4)	1	37	100

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ID 5

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SOCIAL INTROVERSION SUBSCALES

	Raw Score	T Score	Resp %
Shyness/Self-Consciousness (Si1)	2	42	100
Social Avoidance (Si2)	5	58	100
Alienation—Self and Others (Si3)	6	53	100

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CONTENT COMPONENT SCALES

	Raw Score	T Score	Resp %
Fears Subscales			
Generalized Fearfulness (FRS1)	3	71	100
Multiple Fears (FRS2)	8	72	100
Depression Subscales			
Lack of Drive (DEP1)	4	62	100
Dysphoria (DEP2)	0	42	100
Self-Depreciation (DEP3)	1	48	100
Suicidal Ideation (DEP4)	1	62	100
Health Concerns Subscales			
Gastrointestinal Symptoms (HEA1)	0	44	100
Neurological Symptoms (HEA2)	1	47	100
General Health Concerns (HEA3)	2	56	100
Bizarre Mentation Subscales			
Psychotic Symptomatology (BIZ1)	1	54	100
Schizotypal Characteristics (BIZ2)	3	60	100
Anger Subscales			
Explosive Behavior (ANG1)	2	52	100
Irritability (ANG2)	2	46	100
Cynicism Subscales			
Misanthropic Beliefs (CYN1)	15	74	100
Interpersonal Suspiciousness (CYN2)	5	57	100
Antisocial Practices Subscales			
Antisocial Attitudes (ASP1)	12	66	100
Antisocial Behavior (ASP2)	3	59	100
Type A Subscales			
Impatience (TPA1)	3	51	100
Competitive Drive (TPA2)	3	50	100
Low Self-Esteem Subscales			
Self-Doubt (LSE1)	1	44	100
Submissiveness (LSE2)	1	48	83

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Social Discomfort Subscales

Introversion (SOD1)	7	56	100
Shyness (SOD2)	1	41	100

Family Problems Subscales

Family Discord (FAM1)	4	55	100
Familial Alienation (FAM2)	0	40	100

Negative Treatment Indicators Subscales

Low Motivation (TRT1)	2	54	100
Inability to Disclose (TRT2)	3	60	100

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OMITTED ITEMS

Those items for which there is no response or for which both true and false responses have been entered are considered "omitted." The potential for lowering the elevation of individual scales or the overall profile and rendering the administration invalid increases with the number of omitted items.

Defensiveness, confusion, carelessness, and indecision are among the common reasons for omitting items. Examination of the content of the items that were omitted by the respondent may reveal specific problem areas or suggest reasons for their not responding appropriately to all items. Following are the items that were omitted:

- 408. I am apt to take disappointments so keenly that I can't put them out of my mind.
- 421. I am apt to pass up something I want to do because others feel that I am not going about it in the right way.

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CRITICAL ITEMS

The MMPI-2 contains a number of items whose content may indicate the presence of psychological problems when endorsed in the deviant direction. These "critical items," developed for use in clinical settings, may provide an additional source of hypotheses about the respondent. However, caution should be used in interpreting critical items since responses to single items are very unreliable and should not be treated as scores on full-length scales – for example, an individual could easily mismark or misunderstand a single item and not intend the answer given. The content of the items and the possibility of misinterpretation make it important to keep the test results strictly confidential. Special caution should be exercised when interpreting these items in nonclinical settings.

Acute Anxiety State (Koss-Butcher Critical Items)

- 172. I frequently notice my hand shakes when I try to do something. (True)
- 444. I am a high-strung person. (True)

Depressed Suicidal Ideation (Koss-Butcher Critical Items)

- 9. My daily life is full of things that keep me interested. (False)
- 71. These days I find it hard not to give up hope of amounting to something. (True)
- 273. Life is a strain for me much of the time. (True)
- 306. No one cares much what happens to you. (True)
- 454. The future seems hopeless to me. (True)
- 518. I have made lots of bad mistakes in my life. (True)

Threatened Assault (Koss-Butcher Critical Items)

- 134. At times I feel like picking a fist fight with someone. (True)

Situational Stress Due to Alcoholism (Koss-Butcher Critical Items)

- 264. I have used alcohol excessively. (True)
- 487. I have enjoyed using marijuana. (True)
- 518. I have made lots of bad mistakes in my life. (True)

Mental Confusion (Koss-Butcher Critical Items)

- 32. I have had very peculiar and strange experiences. (True)
- 299. I cannot keep my mind on one thing. (True)

Persecutory Ideas (Koss-Butcher Critical Items)

- 42. If people had not had it in for me, I would have been much more successful. (True)
- 228. There are persons who are trying to steal my thoughts and ideas. (True)
- 241. It is safer to trust nobody. (True)
- 259. I am sure I am being talked about. (True)
- 333. People say insulting and vulgar things about me. (True)

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Antisocial Attitude (Lachar-Wrobel Critical Items)

- 84. I was suspended from school one or more times for bad behavior. (True)
- 105. In school I was sometimes sent to the principal for bad behavior. (True)
- 227. I don't blame people for trying to grab everything they can get in this world. (True)
- 254. Most people make friends because friends are likely to be useful to them. (True)
- 266. I have never been in trouble with the law. (False)

Family Conflict (Lachar-Wrobel Critical Items)

- 21. At times I have very much wanted to leave home. (True)

Somatic Symptoms (Lachar-Wrobel Critical Items)

- 33. I seldom worry about my health. (False)
- 295. I have never been paralyzed or had any unusual weakness of any of my muscles. (False)

Sexual Concern and Deviation (Lachar-Wrobel Critical Items)

- 268. I wish I were not bothered by thoughts about sex. (True)

Anxiety and Tension (Lachar-Wrobel Critical Items)

- 172. I frequently notice my hand shakes when I try to do something. (True)
- 299. I cannot keep my mind on one thing. (True)

Sleep Disturbance (Lachar-Wrobel Critical Items)

- 471. I have often been frightened in the middle of the night. (True)

Deviant Thinking and Experience (Lachar-Wrobel Critical Items)

- 32. I have had very peculiar and strange experiences. (True)
- 427. I have never seen a vision. (False)

Depression and Worry (Lachar-Wrobel Critical Items)

- 165. My memory seems to be all right. (False)
- 273. Life is a strain for me much of the time. (True)
- 454. The future seems hopeless to me. (True)

Deviant Beliefs (Lachar-Wrobel Critical Items)

- 42. If people had not had it in for me, I would have been much more successful. (True)
- 228. There are persons who are trying to steal my thoughts and ideas. (True)
- 259. I am sure I am being talked about. (True)
- 333. People say insulting and vulgar things about me. (True)

Substance Abuse (Lachar-Wrobel Critical Items)

- 264. I have used alcohol excessively. (True)
- 429. Except by doctor's orders I never take drugs or sleeping pills. (False)

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Problematic Anger (Lachar-Wrobel Critical Items)

134. At times I feel like picking a fist fight with someone. (True)

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ITEM RESPONSES

1: 1	2: 1	3: 1	4: 2	5: 2	6: 1	7: 1	8: 1	9: 2	10: 1
11: 2	12: 1	13: 2	14: 2	15: 2	16: 2	17: 2	18: 2	19: 1	20: 1
21: 1	22: 2	23: 2	24: 2	25: 2	26: 2	27: 2	28: 2	29: 2	30: 2
31: 2	32: 1	33: 2	34: 1	35: 2	36: 2	37: 2	38: 2	39: 2	40: 2
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411: 2	412: 2	413: 2	414: 1	415: 2	416: 1	417: 2	418: 1	419: 2	420: 2

MMPI-2™
ID 5

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421: /	422: 2	423: 1	424: 2	425: 1	426: 2	427: 2	428: 1	429: 2	430: 2
431: 2	432: 2	433: 2	434: 2	435: 2	436: 1	437: 1	438: 1	439: 1	440: 1
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561: 1	562: 2	563: 1	564: 1	565: 2	566: 2	567: 2			

End of Report

Paula Kornegay	Mother
Charles Paige	Father
*Anthony K.	Bro
*Taushia K.	Sis
*Charles	Bro

* LW Mom

Anthony's brothers

8 1/2 sibs m-fair side
1 1/2 sib died from
coughing - A. didn't
want to talk
about it

Need fam hx
+ detail

(m. d.)

Nathan Jackson
Case

4/27/02
renew tape 1/11
DDD

12/20/01
Gertie

Donna Roberts

(9 ft 4 D who collect'd with him re murder
husband)

Expressing confusion re conversation P. 2.

What can I say etc
RD says more of that

Talked P. 2. again, it's not what I found

She says he did talk P. 2. in 4-10-10
what's the problem anyway
Lester "just prison, they talk"

She is presenting as overwhelmed agency with
fact of husband's death

7461652 Sheila Marie # 7461382
where Nabe stayed

Sheila is off to Oscar

Nabe is a little boy to me
I don't believe it - He wouldn't do this to me

RD: Maybe he was confused and I... she just talks

He never says any plan

No I wouldn't have let him
since Sunday news

Do you think if I believe he would do
something, I would keep or keep the letters

I don't believe he would kill me he
is. I tell you butch & when I said I wouldn't
come home

R: Did he talk in prison P. 2

She denied any conversation. Was P. 2. 3/10/02 time
in that

(2)

Refused July -- spoke of him phs she took -
 merry casing ? maybe; loses track

She -- she was trying to talk in a
 relationship
 said she told him of a girl & wanted etc
 I had my gun but in the later I saw them
 & in the end of it

1/2 of her name just her

→ She indicated she felt old -- (having them made
 her feel young?)

Sheila's { 422 Ten by seven &
 just black legs & red legs
 nose then

? Said at store had a good 7
 coming home - makes it get a turn 49
 Wade called need a place to stay

30 aah in O remembered

re package in fridge

[? Says she saw Wade @ Lberts (V. ERO)]

< Israel in) Freeman ? >

Wade had her all there (E & can phae)

I & Wade & c -- fault

historical memories - playing

Shore pictures told him in most of
 1. the more he needed it.

Jacks on Tape

12/21/01
 2:18 AM
 3:13 credited
 L hand
 2nd hand
 223 w/L hand
 w/in 2 min 23) also

Notes (in - can
 Xangston

But she
 says Rong 2
 2 hand?

(JTH 4) - Cagayalading

Roth (in - 1 (201)
 As is given

Is Peter R hand?
 If so he would put with
 L hand & then maybe want
 to fit away w/ R hand.

Then see w/ Jangayn side
 It's see & his day
 would it up?

how come?

Gloves - finger shot - If they were
 n / fit with being in & talking

Again with large

Chad Jones / How S. Pet.

1 Use & 2 pros v 2 let



Office of the Ohio Public Defender

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Warren, Ohio 44483
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DAVID H. BODIKER
State Public Defender

RECEIVED JAN 25 2002

January 23, 2002

Dr. Sandra McPherson
12434 Cedar Road
#15
Cleveland Heights, OH 44106

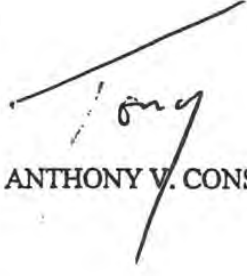
RE: NATHANIEL JACKSON

Dear Dr. McPherson:

Please find enclosed a copy of the Judgment Entry appointing you and Donald. I
have also enclosed the indictment and copy of the affidavit filed by the prosecutor.

The Trial is set to start on October 7, 2002.

See you soon.


ANTHONY V. CONSOLDANE

AVC/cjr
Enclosures

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

-VS-

NATHANIEL JACKSON,

Defendant.

) Case No. 01-CR-794
)
)
)
) Judge Stuard
)
)
) JUDGMENT ENTRY
)

Motion of the Defendant, NATHANIEL JACKSON, is well-taken.
It is therefore ordered by the Court that the Defense employ
Dr. Sandra McPherson, Ph.D, at \$150.00 per hour, and Donald McPherson,
at \$90.00 per hour for _____ hours, with a cap of \$5,000.000, as
expert assistance to aid in the Defense. *JWS*

1/14/02
APPROVED

Don M. Stuard
JUDGE

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNDERREPRESENTED FOR THE
WITH BY ORDINARY MAIL
Don M. Stuard
JUDGE

VOL

RECEIVED

JAN 18 3 50 PM '02

Jackson 4/13/02
Case Notes

✓ D/M/P - listen to tapes ^{audio} / video tape ✓

SMY - finish NRP

ST. D - Current family

D - School records

Nathaniel Jackson

2/12/02

310

SS

born Youngstown

mom, dad - both have visited here. Not together.

Pauline Korneazy - no works all t time, does packing

Charles Paige - does construction

S Tashia Korneazy

-26 yrs.

Anthony Korneazy - don't know what he does. at Dekey

Has arthritis.

Says he has a lot of broken bones

played a lot / ft. ball & basket ball

he took 1st bullet.

Went to 12th grade, but didn't graduate.

Roosevelt Elem

Adams

Stansbury

Hayes Jr. Hg

Has a brother Rayen High Sch - says he had a lot of behavioral problems.

Charles. Sister - Mom's side - five of us

Died of asthma. Dad's " - eight.

Says me & dad still talk.

Juvenile record

Trouble when 16 or 17 in OH for six months. Driving chase, unruly. Then went back to sch for a little bit.

Employment:

Jim's car wash. In '93, that's a few. Was paid by check.
Received about \$5.50 hr.

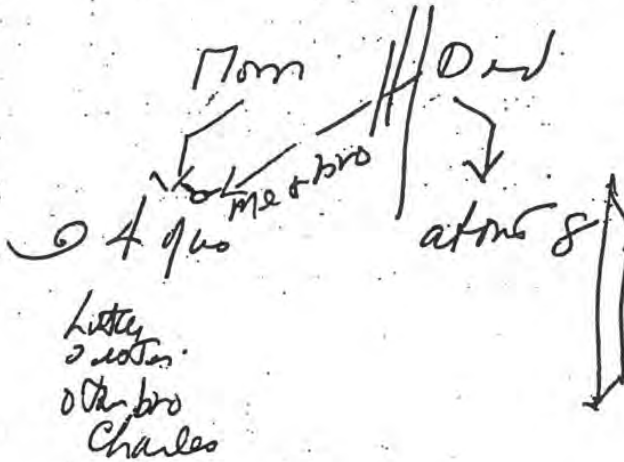
Always did stuff like landscaping...

[Redacted]
 T SR [Redacted]
 b + r Youngstown Ohio
 Mom Dad Gumbo Bro Sister
 Pauline ~~K~~ Charles Anthony K...
 Korneagay Patge
 Ms. maindrom
 Family Jackson Construction
 390 788 626
 26
 Rally
 health papers
 Arthritis
 Left broken spine
 Co / basketball / football
 finger - shot
 Lm - 268 On - 100ha
 School -- 12th grade
 stopped at a J.
 Roosevelt Elem.
 Adams / Stanwick / Hayes Or. H.
 Rayne High.

Jackson
 Ohio

diff. [unclear]
 home due to [unclear]

(2)
 long of both pictures
 of 2 of 2



DK - Dad + Mom

15th 4 16 or 17 } DH for 6 months
 Driving
 looking
 had it in a little

Worked. wanted jobs

2-7 Jim's Car Wash 224 93
 a few months
 2500

←→ and 2/1 →
 old 170

N Jackson

(1)

my 3 1/2 mos
By - he & Nabe
J & A

870 - Shaylese

Mr.

Shaylese

by self
kilo

Fa

Mr. & her boyfriend

Need

More info on drug/alc use - check
Family contacts -

Review with re v # - - under #

✓ details of legal rec - with Tony

Sandra B. McPherson, Ph.D.

Clinical and Forensic Psychologist

12434 Cedar Road, Suite 15
Cleveland Heights, OH 44106

(216) 721-1961
fax (216) 721-1914

To: Family of Nathaniel Jackson

From: Sandra B. McPherson, Ph.D.
Donald M. McPherson, M.Ed

I (Donald McPherson) was here at your house today, but you were not at home at the time.

We would like to have an opportunity to speak with you within the next few days. We are responsible to assist Mr. Jackson's attorneys in the mitigation phase of his capital trial that is drawing to a close at this point.

-We did not have information about how to contact you until this time.

We would like for you to contact us by phone (please call collect the following number in the evening: 216 371 3976. If the phone is busy, please wait and try again. Your call will be accepted. If by any chance, you are not members of his family, please contact us (collect) and let us know.

Our need to speak with you is most urgent and important. If you have any questions, you can reach Mr. Consoldane or Mr. Lewis, attorneys for Mr. Jackson, at the Public Defenders Office in Warren, Ohio. The number there is 330 393 7727 That office can verify our work on this case and can answer questions you may have.

Please find attached a copy of the Court Order that appointed us to assist Mr. Jackson.

Donald M. McPherson, M.Ed.

Sandra B. McPherson, Ph.D.

Nathaniel Jackson Case

Information from the discovery tapes.

Audio tapes involving conversations between Mr. Jackson and Ms. Donna Roberts were reviewed as well as video tape of their interrogations. The audio tapes, of course, precede the video tape, which took place after the arrest. The audio tapes were made of conversations occurring between the two prior to the release of Mr. Jackson from prison. Most of the audio tapes involve repetitive commentary conveying love and sexual intent along with planning for a future together and the demise of Ms. Roberts' husband. Her role is one of a kind of kittenish Southern belle. Her voice is very different from what is seen on her subsequent video tape and it is clear that she rather enjoys the coy young girlfriend-type role that she is playing with him over the phone. He is obviously equally enjoying being a man in charge and assuring her of his undying devotion.

In the two subsequent video tapes, she is obviously attempting to present as distraught over her husband's death and knowing nothing about it. Over time, however, she gets presented with more and more information. Her attempts to deal with such things as the love letters that also indicated intent to kill the man are unconvincing, amounting to why would she have kept them if she thought he really meant to do her husband in. She clearly has a histrionic flair and an enjoyment of playacting and she is able to take more than one role.

Mr. Jackson, on his tape, presents that he did not go to kill the victim, Robert Fingerhut. There are a few interesting kinds of statements in the course of his tape. He had shot himself in the left hand, although he is apparently left-handed, he both writes and smokes with his left hand and that was obvious on the tape. He indicated he threw the gun out of the right passenger window after driving away and a question can be raised as to why or how he would have the right passenger window down in the middle of the winter. There is a question about the fact that he and Donna Roberts had obtained a mask and gloves for him. His story is that he and the victim were in the kitchen talking and at some point a fight erupted, apparently around the affair he was having with Donna. He would not have had on the gloves and mask in the kitchen. However, the finger of the glove apparently was shot.

72 down

- | | | | |
|-------|----|---|------------------------------|
| | 1 | putters red in bed | |
| 79 | 2 | sm bed putters acid. diff | |
| FO-FI | 3 | acid. pore ^{Suspended} high pressure ^{absent some mayr} bed putters "plants" comex 1 | |
| F1 | 4 | | |
| F2 | 5 | | |
| F3 | 6 | Olypsand - | |
| 74 | 7 | org puts - Org, artifice, antil, immersion request & end | repeated
F sent A/B sem 2 |
| ST | 8 | Teaster ruled "enroll letters" Tally'd people w/ other | |
| 84 | 9 | sees in class
hypotension Dis hypot CO | |
| 7 | 10 | | STB |
| ST | 11 | unstable fishing fire fly descends death fruits → suno | |
| 79 | 12 | lenses, or bright from
Blue cadets putters | sim long pattern |

Osteoblasts present in case in last half period
 after for 40. 2. 1. 1. are the good shots. Not named. 11

TEST Ohio Survey
4 or 5 male 4/81
JTB 20 1/2 5
MAY 26 1/2 14
JTB 21 1/2 5

Steph W Pinet
1989-1000
~~1970~~

1956 80 gals
DISC-R
VIQ 72 P1Q78 F11Q75
Woodward Johnson 6.4 Wd 10
Cile 413 Pm 9
deag 51.2 Cmp 4.6

Nathaniel Jackson

~~Mr. But~~

①

Uncle Mo's Brother Joe Jackson

address [REDACTED] Yngon

No sister N's Ma lives next door

"Nathaniel was forced"

(school was -
past tense of
2nd grade)

Poor neighborhood
neglected properties
some homes remain
vacant lots

retired - ed be L. Street

Search for Foster was not fruitful

Woman in the house - believe we down the

Street - Fa's Sister (N's aunt)

Rosewood St - down from Fa's old address

→ Fair
one of jail
whereabouts
unknown

doesn't know who N is (?)

→ Fa is alcoholic
whereabouts unknown

Decent neighborhood - small homes
well kept - large lots - trees

since 4/10/10

Interviews of
contacts with family members
Review records and identify materials
4/10/10 17-2 WALKER Bank 4/10/10

School rec -- [Dietrich].

~~Parent~~

[Parent
Lunch > [Dietrich]

* 10:00 AM

His life -- for everybody

Simple Man

Surge for foot ulcers high blood pressure

father - all right.

No contact. IDK it's true > prison

Charles -- oldest < out now

Anthony -- he's not nice & not

by do.

dayton Tanski

gentle

Phoebe

IDK when

she's 50y old.

~~highly~~ highly active / 10/1/17
Cole W. [unclear]
[unclear] 10/1/17
[unclear]

1/1
repeatedly of yr
[unclear] with [unclear] + [unclear]

Ordering // 10/1/17

②

Apr 17 -- 10⁰⁰ AM -

Es. 1. on 8. by 6 in. - 6.
450 restraints
w. corks & odd ball jobs.

18 - - married to my Cousin
older 4

Why now

State ϕ is input ϕ is output ϕ is output ϕ is output

Drugs? Part 1 RSP
leslie thurston

Ewmy Cousin (87) : 6 In -
 i / 2 2 F o f o r e
 o m e o o w a t c h
 P l i e c a n n i s . P v i
 p o w a t c h w a t c h -
 a g B u d l a y b y

↳ 8 mos -- Lima CG
brought me of 2 CG
2 CG

Drugs

re penging
9. v. presiden
7. 10. 2. 1. pabatu

1994 ~~PR~~ PO terminated my position

Met ~~much~~ the day before
1. on she was present
2. 4 on 10

③

Drugs? 2 of falling out
 - who in
 - 1/2 street 9 or
 2 or

1995 Met - fiancée
 2-3 years (1 year of '95)
 she said - 10 or 12
 5 mg. 4/6 2/2 - 2 mg.
 1/2 - 1/2 - gun in me.
 0 of 1/2 - 1/2
 0 of 1/2 - 1/2
 0 of 1/2 - 1/2
 0 of 1/2 - 1/2

Left got a gun 2 of
 1/2 - 1/2
 He - 1/2 - 1/2
 0 of 1/2 - 1/2
 0 of 1/2 - 1/2

answered
 0 of 1/2 - 1/2
 1/2 - 1/2 - 1/2
 Dec. 15th '95

Name fiancée was murdered
 0 of 1/2 - 1/2
 1/2 - 1/2 - 1/2
 1/2 - 1/2 - 1/2
 1/2 - 1/2 - 1/2

0 of 1/2 - 1/2
 0 - 1996
 Mar 1996's man 2 of 1/2

0 of 1/2 - 1/2
 - May 25th 1997 0 of 1/2
 birth 1/2 - 1/2

[illegible]

⑧

Mr. L. P. (Lora)
 I regret it. - i.e.
 The wonderful
 letters - L. & talk
 all L. & talk
 23 L. Lora
 L. Lora Oct 22

(got on 2. comment)
 contribute - cell
 above as is - E.P.
 2 - 2 - 2 - 2
 1/2 - 1/2 - 1/2 - 1/2
 1/2 - 1/2 - 1/2 - 1/2
 1/2 - 1/2 - 1/2 - 1/2
 1/2 - 1/2 - 1/2 - 1/2

- 0 8x10
 23x24
 a few - 4x6, 5x7, 6x8
 10x12, 12x14, 14x16, 16x18, 18x20, 20x24, 24x30, 30x36, 36x42, 42x48, 48x54, 54x60, 60x66, 66x72, 72x78, 78x84, 84x90, 90x96, 96x102, 102x108, 108x114, 114x120, 120x126, 126x132, 132x138, 138x144, 144x150, 150x156, 156x162, 162x168, 168x174, 174x180, 180x186, 186x192, 192x198, 198x204, 204x210, 210x216, 216x222, 222x228, 228x234, 234x240, 240x246, 246x252, 252x258, 258x264, 264x270, 270x276, 276x282, 282x288, 288x294, 294x300, 300x306, 306x312, 312x318, 318x324, 324x330, 330x336, 336x342, 342x348, 348x354, 354x360, 360x366, 366x372, 372x378, 378x384, 384x390, 390x396, 396x402, 402x408, 408x414, 414x420, 420x426, 426x432, 432x438, 438x444, 444x450, 450x456, 456x462, 462x468, 468x474, 474x480, 480x486, 486x492, 492x498, 498x504, 504x510, 510x516, 516x522, 522x528, 528x534, 534x540, 540x546, 546x552, 552x558, 558x564, 564x570, 570x576, 576x582, 582x588, 588x594, 594x600, 600x606, 606x612, 612x618, 618x624, 624x630, 630x636, 636x642, 642x648, 648x654, 654x660, 660x666, 666x672, 672x678, 678x684, 684x690, 690x696, 696x702, 702x708, 708x714, 714x720, 720x726, 726x732, 732x738, 738x744, 744x750, 750x756, 756x762, 762x768, 768x774, 774x780, 780x786, 786x792, 792x798, 798x804, 804x810, 810x816, 816x822, 822x828, 828x834, 834x840, 840x846, 846x852, 852x858, 858x864, 864x870, 870x876, 876x882, 882x888, 888x894, 894x900, 900x906, 906x912, 912x918, 918x924, 924x930, 930x936, 936x942, 942x948, 948x954, 954x960, 960x966, 966x972, 972x978, 978x984, 984x990, 990x996, 996x1002, 1002x1008, 1008x1014, 1014x1020, 1020x1026, 1026x1032, 1032x1038, 1038x1044, 1044x1050, 1050x1056, 1056x1062, 1062x1068, 1068x1074, 1074x1080, 1080x1086, 1086x1092, 1092x1098, 1098x1104, 1104x1110, 1110x1116, 1116x1122, 1122x1128, 1128x1134, 1134x1140, 1140x1146, 1146x1152, 1152x1158, 1158x1164, 1164x1170, 1170x1176, 1176x1182, 1182x1188, 1188x1194, 1194x1200, 1200x1206, 1206x1212, 1212x1218, 1218x1224, 1224x1230, 1230x1236, 1236x1242, 1242x1248, 1248x1254, 1254x1260, 1260x1266, 1266x1272, 1272x1278, 1278x1284, 1284x1290, 1290x1296, 1296x1302, 1302x1308, 1308x1314, 1314x1320, 1320x1326, 1326x1332, 1332x1338, 1338x1344, 1344x1350, 1350x1356, 1356x1362, 1362x1368, 1368x1374, 1374x1380, 1380x1386, 1386x1392, 1392x1398, 1398x1404, 1404x1410, 1410x1416, 1416x1422, 1422x1428, 1428x1434, 1434x1440, 1440x1446, 1446x1452, 1452x1458, 1458x1464, 1464x1470, 1470x1476, 1476x1482, 1482x1488, 1488x1494, 1494x1500, 1500x1506, 1506x1512, 1512x1518, 1518x1524, 1524x1530, 1530x1536, 1536x1542, 1542x1548, 1548x1554, 1554x1560, 1560x1566, 1566x1572, 1572x1578, 1578x1584, 1584x1590, 1590x1596, 1596x1602, 1602x1608, 1608x1614, 1614x1620, 1620x1626, 1626x1632, 1632x1638, 1638x1644, 1644x1650, 1650x1656, 1656x1662, 1662x1668, 1668x1674, 1674x1680, 1680x1686, 1686x1692, 1692x1698, 1698x1704, 1704x1710, 1710x1716, 1716x1722, 1722x1728, 1728x1734, 1734x1740, 1740x1746, 1746x1752, 1752x1758, 1758x1764, 1764x1770, 1770x1776, 1776x1782, 1782x1788, 1788x1794, 1794x1800, 1800x1806, 1806x1812, 1812x1818, 1818x1824, 1824x1830, 1830x1836, 1836x1842, 1842x1848, 1848x1854, 1854x1860, 1860x1866, 1866x1872, 1872x1878, 1878x1884, 1884x1890, 1890x1896, 1896x1902, 1902x1908, 1908x1914, 1914x1920, 1920x1926, 1926x1932, 1932x1938, 1938x1944, 1944x1950, 1950x1956, 1956x1962, 1962x1968, 1968x1974, 1974x1980, 1980x1986, 1986x1992, 1992x1998, 1998x2004, 2004x2010, 2010x2016, 2016x2022, 2022x2028, 2028x2034, 2034x2040, 2040x2046, 2046x2052, 2052x2058, 2058x2064, 2064x2070, 2070x2076, 2076x2082, 2082x2088, 2088x2094, 2094x2100, 2100x2106, 2106x2112, 2112x2118, 2118x2124, 2124x2130, 2130x2136, 2136x2142, 2142x2148, 2148x2154, 2154x2160, 2160x2166, 2166x2172, 2172x2178, 2178x2184, 2184x2190, 2190x2196, 2196x2202, 2202x2208, 2208x2214, 2214x2220, 2220x2226, 2226x2232, 2232x2238, 2238x2244, 2244x2250, 2250x2256, 2256x2262, 2262x2268, 2268x2274, 2274x2280, 2280x2286, 2286x2292, 2292x2298, 2298x2304, 2304x2310, 2310x2316, 2316x2322, 2322x2328, 2328x2334, 2334x2340, 2340x2346, 2346x2352, 2352x2358, 2358x2364, 2364x2370, 2370x2376, 2376x2382, 2382x2388, 2388x2394, 2394x2400,

0/2 in letters. 0/2
in 1st & 2nd. 0/2 - copy.

3
 We are all well
 and hope you are
 too. I am writing
 you a long letter
 but I am not
 sure I can finish
 it. I am very
 busy at present
 but I will write
 again soon. I
 am very
 affectionately
 yours
 John

Names of 4's & children (3)

Fair wife died
alcohol -- h h 1000
→ 0000 0000

Valley & h
1000 1000
1000 1000

0000 → 1000 0000
0000 → 1000 0000

Charles -- 0000
y 1000 1000
1000 1000

Anthony? 1000 0000 1000
0000 1000 1000

all h x

use

C13 1000 1000 1000
starbed
1000 1000 1000
1000 1000 1000
millen hury 1000 1000

C15 0000 1000
1000 1000 1000
1000 1000 1000
1000 1000 1000

[- v OCP, meth.
glutathione -
No pain -]

26 of Oct 2
J. J. Allen 2nd
J. J. Allen

in here
 / — pill — withdrawn
in OS - S
 P.O. Vicodans
 9/7/81
 - requested
 one 4/cg
 Vicodans -- sleep / alert //

health
Asthma < To 16-17
 5-25ms

bullet - ——— N upper 1/8
 ✓ — side
) 2nd eye
 — 2 walk

1997
treated or
ht- ✓

→ Co.
TX's
in

to an
yellow
leg
no - 8 l/
A coral as first
in - deep - 1 m
hl survival
C.O.S.
M - 1 - h
09/07/07
got - p
09/07/07

off top of white
mudstone
plate
large
bedding
about
C.P.R.
5 + 5' w
pl / vnd
x left

(10)

<p>IV ① 1 ll. big foot</p>	<p>ll big foot body of, head inexplicable to feet</p>
<p>V ② 1 in (but safety) ③ 1 in (tab) 10, — 0 1/2</p>	<p>10 1/2 (anatom) 2 1/2 to 1 1/2 in (feet)</p>
<p>VI ④ 2) neck ^{traces} _{5 inches} 10 ⑤ him him ⑥ VMA 5 in say 1 accession for split open</p>	<p>1 color. 1 ll 2 in (feet)</p>
<p>VII ⑦ 1/2 2) 2 11 ⑧ 1 ll 2 heads 1/2 1/2 10 1 2 heads</p>	<p>2 r. Index feet</p>
<p>VIII ⑨ 2 animals 12 ⑩ 2 animals crawling on smooth (0's)</p>	<p>2 large men 1 (1/2) 1/2 2 1/2 1/2 1/2 1/2 1/2 1/2 1/2 1/2</p>

S U M M O N S O N I N D I C T M E N T
RULE 9 (B)

TRUMBULL COUNTY COMMON PLEAS COURT
WARREN, OHIO 44481

THE STATE OF OHIO
PLAINTIFF

CASE NO. 2001 CR 00794

VS.

NATHANIEL E JACKSON
DEFENDANT

TO: THOMAS ALTIERE, SHERIFF

An Indictment, a copy of which is attached hereto, has been
filed in the Trumbull County Court of Common Pleas charging
NATHANIEL E JACKSON with: CT 1: AGG MURDER (F) W/SPECS OF AGG
CIRCUMSTANCES CT 2: AGG MURDER (F) W/SPECS OF AGG CIRCUMSTANCES CT 3:
AGG BURGLARY (F1)W/FIREARM SPEC CT 4: AGG ROBBERY (F1) W/FIREARM SPEC

You are commanded to summon NATHANIEL E JACKSON, said Defendant to
appear before said court at Trumbull County Common Pleas Courthouse,
before Judge John M. Stuard on Monday, December 31, 2001 at 11:00 a.m.

Said Defendant is hereby informed that HE may be arrested if HE
fails to appear at the time and place stated herein.

Special instructions to the executing officer:

Defendant must appear for arraignment. No waivers accepted.

Given under my hand and the seal of said
Court this December 28, 2001.

MARGARET R. O'BRIEN, Clerk of Courts
Trumbull County, Ohio

Rochelle Ryan
Deputy Clerk

I certify the foregoing to be a
true copy of the original writ.
Thomas Altieri, Sheriff
Rochelle Ryan, Deputy

CASE NO. 2001 CR 00794 VS. NATHANIEL E JACKSON

RETURN

Received this writ on the _____ day of _____, 20____
 at _____ o'clock ____m., and on the _____ day of _____, 20____
 I served the same on the within named by _____

RETURN OF SERVICE OF SUMMONS (PERSONAL)

Fees I received this summons on _____ 20____
 Service \$_____ at _____ o'clock ____m., and made personal service o
 Mileage _____ upon _____
 Total \$_____ by locating him-them and tendering a copy of summons
 Date: _____ accompanying documents, on _____, 20____

 Sheriff, Bailiff, Process Ser

By _____
 Dep

RETURN OF SERVICE OF SUMMONS (RESIDENCE)

Fees I received this summons on _____ 20____
 Service \$_____ at _____ o'clock ____m., and made residence service
 Mileage _____ it upon the defendant(s) _____
 Total \$_____ by leaving, at this their usual place of residence wi
 Date: _____

_____ a person of suitable age and discretion then residing
 therein, a copy of the summons and accompanying docume
 on _____, 20____.

 Sheriff, Bailiff, Process Ser

By _____
 Dep

RETURN OF SERVICE OF SUMMONS (FAILURE OF SERVICE)

Fees I received this summons on _____ 20____
 Service \$_____ at _____ o'clock ____m., with instructions to make
 Mileage _____ personal-residence service upon the defendant(s) _____
 Total _____
 Date _____

_____ and I was unable to serve a copy of the summons upon _____
 _____ for the following reasons: _____

 Sheriff, Bailiff, Process Ser

By _____
 Dep

01-CR-794
DIRECT PRESENTMENT

INDICTMENT
Crim R. 6, 7

AGGRAVATED MURDER (F)
WITH SPECIFICATIONS OF
AGGRAVATING
CIRCUMSTANCES
(2903.01(A), 2941.14(C), and
2929.04(A)(7))

THE STATE OF OHIO

TRUMBULL COUNTY, ss.)

COURT OF COMMON PLEAS

Of the Term September, in the year two thousand one,

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 11th day of December, 2001, at Trumbull County, Ohio, NATHANIEL E. JACKSON, did purpose, and with prior calculation and design, cause the death of Robert S. Fingerhut, age 56,

SPECIFICATION #1 TO COUNT ONE: Aggravating Circumstance of Aggravated Burglary (2929.04(A)(7))

THE GRAND JURORS further find and specify pursuant to Ohio Revised Code section 2929.04(A)(7) that the offense was committed while NATHANIEL E. JACKSON was committing, attempting to commit, or fleeing immediately after committing or attempting to commit Aggravated Burglary, and NATHANIEL E. JACKSON was the principal offender in the commission of the Aggravated Murder.

You are hereby notified that you are under indictment for a felony of violence and pursuant to Section 2923.13 of the Ohio Revised Code you are prohibited from acquiring, having, carrying, or using any firearm or dangerous ordnance while under indictment.

Case No. 01-CR-794 - DIRECT PRESENTMENT
Defendant JACKSON, Nathaniel E.

Page 1 of 6

SPECIFICATION #2 TO COUNT ONE: Aggravating Circumstance of Aggravated Robbery (2929.04(A)(7)

THE GRAND JURORS further find and specify pursuant to Ohio Revised Code section 2929.04(A)(7) that the offense was committed while NATHANIEL E. JACKSON was committing, attempting to commit, or fleeing immediately after committing or attempting to commit Aggravated Robbery, and NATHANIEL E. JACKSON was the principal offender in the commission of the Aggravated Murder.

in violation of the Ohio Revised Code, Title 29, Section 2903.01(A), 2941.14(C), and 2929.04(A)(7), *and against the peace and dignity of the State of Ohio.*

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Defendant JACKSON, Nathaniel E.

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COUNT 2: AGGRAVATED MURDER (F) WITH SPECIFICATIONS OF AGGRAVATING CIRCUMSTANCES (2903.01(B), 2941.14(C), and 2929.04(A)(7))

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 11th day of December, 2001, at Trumbull County, Ohio, NATHANIEL E. JACKSON, did purposely cause the death of Robert S. Fingerhut, age 56, while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, Aggravated Burglary and/or Aggravated Robbery,

SPECIFICATION #1 TO COUNT TWO: Aggravating Circumstance of Aggravated Burglary (2929.04(A)(7))

THE GRAND JURORS further find and specify pursuant to Ohio Revised Code section 2929.04(A)(7) that the offense was committed while NATHANIEL E. JACKSON was committing, attempting to commit, or fleeing immediately after committing or attempting to commit Aggravated Burglary, and NATHANIEL E. JACKSON was the principal offender in the commission of the Aggravated Murder.

SPECIFICATION #2 TO COUNT TWO: Aggravating Circumstance of Aggravated Robbery (2929.04(A)(7))

THE GRAND JURORS further find and specify pursuant to Ohio Revised Code section 2929.04(A)(7) that the offense was committed while NATHANIEL E. JACKSON was committing, attempting to commit, or fleeing immediately after committing or attempting to commit Aggravated Robbery, and NATHANIEL E. JACKSON was the principal offender in the commission of the Aggravated Murder.

in violation of Section 2903.01(B), 2941.14(C), and 2929.04(A)(7) of the Ohio Revised Code, *and against the peace and dignity of the State of Ohio.*

You are hereby notified that you are under indictment for a felony of violence and pursuant to Section 2923.13 of the Ohio Revised Code you are prohibited from acquiring, having, carrying, or using any firearm or dangerous ordnance while under indictment.

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Defendant JACKSON, Nathaniel E.

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COUNT 3: AGGRAVATED BURGLARY (F1) WITH FIREARM SPECIFICATION

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 11th day of December, 2001, at Trumbull County, Ohio, NATHANIEL E. JACKSON, by force, stealth, or deception, did trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, to-wit: 254 Fonderlac, Howland Township, Ohio, when Robert S. Fingerhut, age 56, was present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, and NATHANIEL E. JACKSON did inflict, or attempted or threatened to inflict physical harm on Robert S. Fingerhut, and NATHANIEL E. JACKSON did have a deadly weapon or dangerous ordnance on or about his person or under his control,

SPECIFICATION #1 TO COUNT THREE: Firearm Specification (2941.145)

THE GRAND JURORS further find and specify pursuant to Ohio Revised Code 2941.145 that the said NATHANIEL E. JACKSON did at the time of his commission of the crime of Aggravated Burglary have a firearm on or about his person or under his control, and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense, said firearm being defined in Section 2923.11 of the Revised Code,

in violation of Section 2911.11(A)(1)(2) and 2941.145 of the Ohio Revised Code, and against the peace and dignity of the State of Ohio.

You are hereby notified that you are under indictment for a felony of violence and pursuant to Section 2923.13 of the Ohio Revised Code you are prohibited from acquiring, having, carrying, or using any firearm or dangerous ordnance while under indictment.

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Defendant JACKSON, Nathaniel E.

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COUNT 4: AGGRAVATED ROBBERY (F1) WITH FIREARM SPECIFICATION


THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 11th day of December, 2001, at Trumbull County, Ohio, NATHANIEL E. JACKSON, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, did have a deadly weapon on or about his person or under his control, and either displayed the weapon, brandished it, indicated that he possessed it, or used it, and NATHANIEL E. JACKSON did inflict, or attempt to inflict, serious physical harm on Robert S. Fingerhut, age 56,


SPECIFICATION #1 TO COUNT FOUR: Firearm Specification (2941.145)

THE GRAND JURORS further find and specify pursuant to Ohio Revised Code 2941.145 that the said NATHANIEL E. JACKSON did at the time of his commission of the crime of Aggravated Robbery have a firearm on or about his person or under his control, and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense, said firearm being defined in Section 2923.11 of the Revised Code,

in violation of Section 2911.01(A)(1)(3) and 2941.145 of the Ohio Revised Code, *and against the peace and dignity of the State of Ohio.*

You are hereby notified that you are under indictment for a felony of violence and pursuant to Section 2923.13 of the Ohio Revised Code you are prohibited from acquiring, having, carrying, or using any firearm or dangerous ordnance while under indictment.


Dennis Watkins, Prosecuting Attorney


Charles L. Morrow, Asst. Pros. Attorney

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Defendant JACKSON, Nathaniel E.

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01-CR-794
 DIRECT PRESENTMENT
 September Eighth Term, 2001
COMMON PLEAS COURT
TRUMBULL COUNTY, OHIO

THE STATE OF OHIO

vs.

NATHANIEL E. JACKSON
 c/o Trumbull County Jail
 Warren, OH 44481

SSN: [REDACTED] DOB: [REDACTED]

Indictment for: CT 1: AGG MURDER (F) W/SPECS
 OF AGG CIRCUMSTANCES (2903.01(A),
 2941.14(C), and 2929.04(A)(7);
 CT 2: AGG MURDER (F) W/SPECS OF AGG
 CIRCUMSTANCES (2903.01(B), 2941.14(C), and
 2929.04(A)(7);
 CT 3: AGG BURGLARY (F1) W/FIREARM SPEC
 (2911.11(A)(1)(2) and 2941.145;
 CT 4: AGG ROBBERY (F1) W/FIREARM SPEC
 (2911.01(A)(1)(3) and 2941.145

[Signature]

Prosecuting Attorney

A TRUE BILL

[Signature]
 Foreman of the Grand Jury

This Bill of Indictment found upon testimony sworn and sent before
 the Grand Jury at the request of the Prosecuting Attorney

[Signature]
 Foreman of the Grand Jury

Filed _____, 20____

Clerk

By _____

Deputy

On this _____ day of _____, 20____

the within named _____

Defendant was arraigned, and pleads

_____ guilty to this indictment

Clerk

By _____

Deputy

The State of Ohio
Trumbull County.

I, the undersigned, Clerk of the Court of
 Common Pleas in and for said County, do hereby
 certify that the foregoing is a full, true, and correct
 copy of the original indictment, with endorsements
 thereon, now on file in my office.

WITNESS my hand and seal of said Court at,
 Warren,

Ohio, this 28 day of Dec, 2001

[Signature]

Clerk

By _____

Deputy

Case No.
 Defendant

01-CR-794 - DIRECT PRESENTMENT
 JACKSON, Nathaniel E.

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COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO)
) SS.
COUNTY OF TRUMBULL)

AFFIDAVIT FOR ARREST WARRANT

Before me, the Honorable John M. Stuard, Judge of the Court of Common Pleas, Trumbull County, Ohio, and for the above-named County, personally came Detective Paul Monroe of the Howland Township Police Department, 169 Niles-Cortland Road, Warren, Ohio. Affiant has been employed by the Howland Township Police Department as a police officer for fourteen (14) years.

On December 12, 2001 at approximately 12:00 a.m., Trumbull County 911 dispatch received an emergency telephone call from the residence of Donna M. Roberts and Robert S. Fingerhut at 254 Fonderlac SE, Warren, Ohio 44484. The caller identified herself as the wife of Fingerhut, told the dispatcher that there was a problem with her husband, and that he was on the kitchen floor. She was screaming and complaining of a problem with her heart. Emergency vehicles were immediately sent to the home.

The Fingerhut home is a large single story brick home with two bedrooms and six other rooms. The home is located in Howland Township, Trumbull County, Ohio and surrounded by other large residential houses in what is known as Avalon Estates. Ptlm. Albert Ray arrived at the home and found Robert Fingerhut dead in a pool of blood near the open kitchen door which leads to an attached two car garage.

Affiant arrived at the scene at 12:35 a.m. and found other officers and Howland's EMT Unit along with the victim's wife, Donna M. Roberts. She appeared very excited, curious and asking a

lot of questions. Affiant said to her that it appeared that he had been shot. Ms. Roberts responded saying "Shot. Oh my God someone murdered my Robert." This conversation took place in the master bedroom. Affiant at this time did not know how the victim had died. In fact, it was initially believed that Fingerhut may have committed suicide since a revolver was found in close proximity to the body.

Affiant observed the body of Fingerhut as being face down and fully clothed wearing a lined Cincinnati Reds jacket. The weapon was less than two (2) feet from the body, and there was no evidence of forced entry. Officers at the scene also noticed drops of blood found separate from the pool of blood around the body. In fact, one large drop of blood was found in the hallway near the living room.

Shortly after Affiant arrived, Dr. Humphrey Germaniuk, Forensic Pathologist of the Trumbull County Coroner's Office, arrived at the scene. He photographed the scene as did Officer Anthony Leshnack of the Trumbull County Sheriff's Department and the Trumbull County's Homicide Investigation and Prosecution Unit. Dr. Germaniuk, upon inspecting the area of the body discovered that the 38 revolver next to the victim was fully loaded. Further, upon close inspection of the body, it was determined that the victim had been shot at least three times, including one shot to the back of the head.

Dr. Germaniuk determined that the victim died of multiple gunshot wounds, and the case was ruled a homicide. He also concluded that the victim was probably engaged in a struggle with the assailant since he had suffered other injuries including lacerations, abrasions and contusions. In addition, there appeared to be gunshot residue on the victim's red jacket where one of the gunshot wounds was observed.

After determining that the victim was in fact a homicide victim, your Affiant talked to Donna Roberts a second time. She was told that it was going to take a long time to process the scene, and asked if he could contact a family member to take her from the home and that he would talk to her later. She was emotional and crying at the time. Affiant also asked her for permission to search the whole home. Donna Roberts stated "I told you do whatever you have to do, search the whole place, just find the guy." A written consent was later obtained that morning. Also Roberts informed Affiant that her husband's vehicle, a silver 2001 Chrysler 300M was missing. At approximately 2:00 a.m., Ms. Roberts left with her brother Ralph Roberts to his home in Austintown, Ohio.

During the next few hours, Affiant and other officers searched the home and garage area of the house. In the garage was Donna Roberts' vehicle, a 2000 maroon Chrysler 300M. In the trunk of Ms. Roberts' car, in a brown paper bag with the name Nate Jackson and his prison number on it, officers found 145 handwritten letters from Donna Roberts addressed to Nathaniel E. Jackson, inmate at the Lorain Correctional Institution, Grafton, Ohio. The officers also found male clothing in the bag.

In the master bedroom another 143 handwritten letters were found which were addressed to Donna M. Roberts, PO Box 1483, Warren, Ohio. They were from Nathaniel E. Jackson whose address was Lorain Correctional Institution. Affiant read some of the letters found at both locations and concluded that Donna M. Roberts and Nathaniel E. Jackson were and had been lovers for over 2 years. These letters also established that they were plotting to murder Robert Fingerhut.

After determining that Ms. Roberts was likely involved in her husband's murder, she was requested to come to the Howland Township Police station for a further interview. At 1:00 p.m. December 12, 2001, she arrived with her brothers and was interviewed by Affiant and Captain Karl

Compton. She proceeded to tell officers what she had done the day before finding her husband. She said she saw Robert last alive at 8:30 a.m. on December 11th prior to her going to work at the Greyhound Bus Terminal, Warren, Ohio. (Her husband owned and operated the Warren and Youngstown Greyhound facilities). She went to work and did not see him the whole day. He had gone to work in Youngstown. At 5:45 p.m. she returned home from work. Then at 9:00 p.m. she spoke to Robert and he told her that he was going to be late and that "she should go shopping at the mall and buy herself something nice because she deserves it."

She stated in part that she went to Giant Eagle, Walmart and K-Mart and that she was gone for approximately three hours shopping. She said she arrived home around mid-night and found her husband laying on the floor. She said she never touched him. She then told Affiant "You don't know something about Robert, that is, he goes both ways" (which Affiant interpreted as meaning that he was gay). She told Affiant that though she had never met his friends, there was a man named "Bobby" who had been calling a couple times a week for several weeks until last week. Furthermore, she claimed that since "Bobby" stopped calling her husband, he had been acting strange. She claimed there had been no big problems between her and her husband.

Affiant asked Ms. Roberts whether she had any boyfriends. She stated that a year or six months ago, she dated a man who was half-black and half-Hispanic named Carlos for two or three months. She said that they (meaning she and her husband) were "just a real cool couple." She did not mention any other names. Affiant then confronted her with the name Nathaniel E. Jackson. Upon hearing his name, she stated that she knew him and that she had been seeing him for two years. She had picked him up from prison on Sunday, December 9, 2001 and "had driven him home to Youngstown and dropped him off" at Oscar and Sheila's house in Youngstown, Ohio after picking

up some marijuana at her house. She next had contact with Jackson on Tuesday, December 11, 2001 when he had called her from a pay phone. Other than these two times she had not had contact with Nate. She further said that Robert knew about Nate and that they were friends.

She also mentioned that on Tuesday she had gone alone to Red Lobster and had dinner and one alcoholic beverage. After going over her story again-she remembered that she had also talked to Nate on the phone on Monday. She told Nate that she could not see him again to have sex and that she just wanted to be friends. In summary, the interview lasted one hour and Donna Roberts denied personally seeing Jackson except on Sunday morning and afternoon when she had picked him up from prison and brought him home. She was sure of that.

On Thursday, December 13, 2001, the victim's Chrysler automobile was found by Youngstown Police Department at Pershing and Victoria Streets in Youngstown, Ohio at 6:21 p.m. Affiant and Officer Frank Dillon and the Howland Police Department arrived at the above address at approximately 6:35 p.m. The car was unlocked with the keys in it. Blood drops appeared to be on the outside front passenger's door with what appeared to be blood smears on the door handle itself. Inside the car there appeared to be finger smears of blood on the front seat, and other blood stains on the headlight switch, keys, dashboard and stereo radio. This vehicle was towed to the Howland Township Police Department and then to Attorney General's B.C.I. & I Laboratory, where Det. Sgt. Peter Pizzulo and B.C.I. Forensic Scientist Cindy Maylee processed the vehicle for fingerprints and blood-DNA evidence.

On Saturday, December 15, 2001 at 4:47 p.m., a tape recorded interview of Donna Roberts was conducted at the Howland Township Police Department by Affiant and Officer Dillion. Roberts was represented by Attorney Steve Chuparkoff. She was not in custody and voluntarily came to the

Howland Township Police station on her own accord. Further, she received a verbal and written Miranda warning and knowingly waived her constitutional rights. This interview lasted over one and one-half hours.

During this interview she contradicted her earlier statements and admitted that she had been with Nate Jackson on Sunday, Monday and Tuesday. She stated that she had stayed with him or got him a room at two different motels, the Wagon Wheel (Sunday night) on Market Street in Boardman, Ohio and the Days Inn (Tuesday night) which is also on Market Street in Boardman, Ohio. Further, she admitted that she had dinner with Jackson on the night of the shooting (December 11th) at the Red Lobster in Niles, Ohio at approximately 6:00 p.m. After eating they then went back to her house to feed her dogs and then she took him back to Oscar and Sheila's house on Wirt Street, Youngstown, Ohio. At 9:30 p.m., Roberts was in her car when Jackson called on her car phone and said that he needed her to help him and put him up for a week.

She claimed that she picked up Jackson on Wirt Street in Youngstown. When he got in her car, she stated that Jackson had a bandage over his left index finger which he said was injured with a hammer. He asked her for money and she gave him \$200.00. They then drove to a crack house in Youngstown and purchased \$100.00 worth of crack. Then she drove to the Days Inn and charged the room on her Master Card at approximately 10:30 p.m. He started to smoke crack and after a few minutes, she left him there. This was the last time she saw Jackson. Further, towards the end of the interview, she changed her story and told Affiant that Jackson, during a telephone call made after the discovery of Roberts' body, said he had been shot in the finger. She also stated that Jackson may have taken her cell phone. Further she said that "she could not believe that Jackson would ever do anything to Robert."

On Sunday, December 16, 2001, Affiant went to the Days Inn and verified that Donna Roberts had rented Room 129 for one week. A motel employee stated on Saturday, December 15, 2001, she had been cleaning the room and found used condoms, bloody dressings, wash cloths, and hydrogen peroxide. They were thrown in the trash dumpster and later retrieved by Affiant. One of the bloody medical wraps looked as if it could have been wrapped around an injured finger.

On Tuesday, December 18, 2001, B.C.I Agent Ed Lulla went to Room 129 of the Days Inn and processed the room and found what appeared to be blood stains on the bed comforter, on wall near the door, on the floor in the bathroom, and on a wash cloth. Also fingerprints were found throughout the room.

Other evidence developed by Affiant and other police officers in this case which include officers from the Howland Township Police Department, Warren Police Department and the Trumbull County Sheriff's Department showed that lay witnesses also contradict the often self-contradicting story given by Donna Roberts. For example, Roberts told investigators that he was working late on Tuesday night and that she should go shopping. In fact, Dep. Jose Sanchez, who was working at the Youngstown Grey Hound Office with Robert Fingerhut, said that he remarked to Fingerhut that he (Fingerhut) was lucky and that he was going to get out of here on time. In fact, Fingerhut left at 9:00 p.m. It takes approximately 20-25 minutes to go from Youngstown to Howland.

Also Donna Roberts said that they were getting along well. However, an employee at the Youngstown Grey Hound business said to investigator that on Monday, December 10, 2001, Donna Roberts asked her husband for \$3,000.00 and he said no and she gave him, according to witness, she gave him "the dirtiest look, like she was out to get him." Another employee in Youngstown said that

Fingerhut and his wife had an argument a week before his death over the phone and the argument "was the worst argument he ever heard Fingerhut and Donna Roberts ever have."

Furthermore, Affiant has attached to this Affidavit, copies of letters written by Nathaniel E. Jackson and Donna Marie Roberts to each other. (Jackson letters of November 27, 2001, October 29, 2001 and October 26, 2001; Roberts letter November 26, 2001). These letters establish a conspiracy between Nathaniel E. Jackson and Donna Marie Roberts to murder Robert Fingerhut upon Jackson's release from prison on December 9, 2001.

A check into the prison status of Nathaniel E. Jackson showed that on February 22, 2001, Nathaniel Edward Jackson (DOB [REDACTED], SSN [REDACTED]) formerly of [REDACTED], Youngstown, Ohio was sentenced for the third time to prison for two (2) counts of Receiving Stolen Property. Jackson was sentenced by the Mahoning County Common Pleas Court to a term of one (1) year at the Lorain Correctional Institution, Lorain, Ohio. On December 9, 2001 at 8:00 a.m., he was released from prison.

Examples of Roberts and Jackson 's murder plot are numerous. In the Friday, October 26, 2001 letter of Jackson, he writes to Roberts that upon his release they were to get a hotel room together to spend some romantic time before killing Robert Fingerhut. (As previously present in the foregoing Affidavit-Donna Roberts did in fact before his release get a room for Jackson at the Wagon Wheel Motel in Boardman, Ohio). Jackson goes on and writes..."then after that you don't ever have to worry about making known more excusses(sic) to him, because he will no longer be with us after 12-10-01." Jackson then drew a tombstone which read:

R		P
E		I
S	IN	S
T		S

(page 2) (Emphasis added). Later on page 8, he writes:

"Hey Donna just think come 12-11-01 you'll be waking up to me or maybe we'll give it a couple of days to let things look cool an (sic) after the Funeral Baby when I come home I'm never leaving an (sic) we're only doing it like that just to make it look good...the way that I have it all planned out is so sweet an (sic) alls I need is for my Baby not to worry an (sic) leave everything else up to me..." (Emphasis added).

In his October 29, 2001 letter Jackson writes another letter to Donna and says ... (p. 1) "An as far as that Robert Problem? Yes I'm taking care of that the next night. Because I told you I'm tired of living like this when I don't have to. An (sic) After that will you get me a 2002 Cadillac DeVille? Because I dream of it a lot." (Emphasis added). (It is noted that Affiant has learned from his investigation and talking to State Farm Insurance that the victim had \$325,000 in life insurance with his wife as beneficiary.) (It is emphasized that the above letters were found in the bedroom of Donna Roberts-all letters written to her sent to a post office box in her name and not to the Fonderlac residence.

The most recent letter attached to this Affidavit is the Monday, November 26, 2001 letter written by Donna Roberts and sent to Nathaniel Jackson at the Lorain Correctional Institution. This letter was found in Donna Roberts automobile which was parked in the Fonderlac residence at the time of the homicide. Roberts addresses Jackson as "My dearest sweetheart." This letter is six (6) handwritten pages. There are many references to the murder plot in the letter. An example, Roberts state of mind on November 26th is well illustrated on page 4 which in part reads:

"...And after it's over, I can get a place for you even here in Warren for a couple weeks because who is to tell me not to? Oh-I have been all over looking for a ski mask. I only see those knitted caps. Any suggestions on who might have them? And I'm still looking for gloves because I don't think the thick ones I'm seeing are good to work with as would be thinner leather ones. Know what I mean?"

And yes, sneaking to see you for a couple hours doesn't do it. It leaves us both with no real life together and when you go your way, you have to fend for yourself and eat alone and sleep alone and be out with the wolves. And me - I (live) exist in hell on earth. Like last night - I got so sick of just looking at him. And hearing the same shit over and over. And smelling his breath. And every other little thing - it's all bad. And seeing his skin. And watching him walk - or breathe. I can't hold in my disgust and contempt for him well at all and he sees it every time he looks at me now. Which makes him feel worse about me in return. Which makes him talk to me and treat me like dirt."

Affiant further states that Trooper Gerald A. Funelli of the Ohio State Highway Patrol has obtained copies of eighteen(18) separate telephone conversations which were recorded at the Lorain Correctional Institution, an Ohio State Prison, located in Grafton Ohio. These recordings were made between October 25, 2001 and December 8, 2001 and were made from Lorain Correctional Institution to telephone number 330-609-7812, which number is associated with a telephone belonging to Donna Roberts.

Your Affiant reasonably believes that these recorded prison conversations were had between Donna Roberts and Nathaniel Jackson. During these conversations, Nathaniel Jackson, who identifies himself during the collect calls from prison, and Donna Roberts, discuss the planned murder of Robert Fingerhut. Donna Roberts made the following statements: "I can't take it anymore here," "I even gave you permission to do that to Robert to be with you forever,"

During these conversations Nathaniel Jackson states the following: "I can't wait to get out to do what has to be done," "We in this 'til death do us part," "We going to wake-up for Christmas together," (and to which Donna Roberts admits to daydreaming about the same thing); and "You would like to let him see you suck my dick before he goes away."

Finally, during the final prison conversation which was recorded on December 8, 2001, the day before Nathaniel Jackson was released from prison, the following exchange took place:

Nathaniel Jackson: "I am going to need just one thing."

Donna Roberts: "What?"

Nathaniel Jackson: "I just need to be in the house when he come home."

WHEREFORE, for the above-given reasons, Affiant truly believes that probable cause has been established to charge both DONNA ROBERTS, 254 Fonderlac, SE, Warren, OH 44484; DOB [REDACTED] and SS # [REDACTED] and NATHANIEL E. JACKSON, [REDACTED] Youngstown, Ohio; DOB [REDACTED]; SS# [REDACTED] with the crimes of AGGRAVATED MURDER §2903.01(A) and AGGRAVATED BURGLARY §2911.11(A)(1)(3) and after due consideration, Affiant further prays that this Honorable Court issue upon the Prosecutor's Complaint warrants for the arrest of said DONNA MARIE ROBERTS and NATHANIEL E. JACKSON.

FURTHER AFFIANT SAYETH NAUGHT.

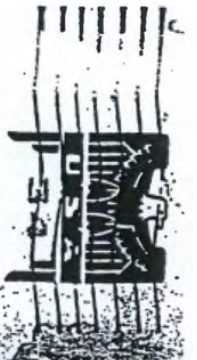
DETECTIVE PAUL MONROE
AFFIANT

Sworn to and subscribed before me, a Common Pleas Judge, in and for Trumbull County, Ohio, this

HONORABLE JOHN M. STUARD
JUDGE, COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

OK
075 S. Avon Belcon Rd.
Rafion, Ohio 44044

Donna Marie Roselets
P.O. Box 1483
Warren, Ohio 44462



44482+1483



Hey you!

MONDAY OCT 29, 2001

9:00 P.M.

WHAT'S going on my love? well ye
 BABY I DO have AN IDEA OF how much you miss
 me AN BABY I KNOW ITS A whole lot. AN I miss
 you even more! AN BABY STOP ASKING me CO I
 REALLY love you, BECAUSE you know I DO! RIGHT NOW
 AN FOREVER! okay? AN how DO you know FOR SURE
 well DON'T you think THAT I would have BEEN gone
 AFTER ALL OF THIS TIME? AN hell NO you'RE NOT foolin
 yourself AGAIN. ^{AN} ~~BE~~ you've NEVER fooled yourself for
 THE BEGGINING BECAUSE my love has NEVER STOPPED.
 FOR you AN NEVER will! well TELL me what hotel
 DO you WANNA go TO? BECAUSE SOMETHING WITH A
 JACUZZI, AN ROOM SERVICE DO SOUND GOOD. AN YES THAT
 WHAT I WANT. AN SOME WEED SOME GOOD WEED, SO
 WE CAN REALLY BE RELAXED AN MAKE love FOR A long time
 AN I WANNA BRING ALL OF THE FREAK OUT OF you;
 AN I WANT A BOTTLE OF HENNESSY FROM THE LIQUOR STORE
 okay FOR THE AFTER PARTY FOR when we get BACK TO
 THE hotel. AN AS FAR AS THE ROBERT PROBLEM? yes I'M
 TAKING CARE OF THAT THE NEXT NIGHT, BECAUSE I TOLD
 you I'M TIRED OF living like THIS when I DON'T
 HAVE TO. AN AFTER THAT will you get me A 2002
 CADILLAC DEVILLE? BECAUSE I DREAM OF it ALOT. SO
 DON'T WORRY NO MORE BECAUSE THATS FOR SURE! AN
 NO I DON'T WANT NO-ONE ELSE TO EVEN KNOW
 ABOUT THIS, AN YES I will BE 100% SAFE okay.
 AN I DON'T NEED KNOW.

AS WHAT TIME THAT I'll BE LEAVING FROM HERE? WELL I
 IN THE MORNING SOMETIME, SO WHEN I GET TO THE
 BUS STATION UP IN ELYRIA I'll CALL AN LET YOU KNOW
 AT WHAT TIME THAT IT GET TO THE AKRON GREYHOUND
 STATION AN THEN MAYBE YOU CAN BE THERE WAITIN
 FOR ME WILL YOU. PLEASE? AN ~~NO~~ ^{NO} YOU ARE NO
 ALLOWED TO SEND ME A TICKET, BUT I'M STILL CHECK
 UP ON THAT, AN AS FAR AS WHERE THIS PLACE IS? IT'S
 IN GRAFTON OHIO, BUT FROM WHAT I SAW ON THE
 SCHEDULE IS THAT THE BUS GOES TO CLEVELAND FIRST
 AN I WILL BE THERE FOR AWHILE SO I MIGHT HAVE
 YOU TO PICK ME UP IN CLEVELAND BECAUSE I HAVE
 TO BE WITH YOU AS SOON AS POSSIBLE, AN THIS IS HOW
 YOU WILL BELIEVE THAT I LOVE YOU 100%. WHEN I
 TAKE CARE OF BUSINESS? AN THEN YOU'LL SEE THAT I
 REALLY LOVE YOU AN WANNA BE WITH YOU, BECAUSE IF
 I DIDN'T LOVE YOU AN DIDN'T WANNA BE WITH YOU
 WELL I WOULDN'T BE WILLING TO DO SOMETHING THIS
 SERIOUS DON'T YOU THINK? AN BABY I KNOW THAT YOU
 WOULDN'T NEVER DENY ME FOR NOTHING THAT I REALLY
 NEEDED AN I TOLD YOU I WAS JUST TALKING CRAZY
 OKAY? WELL WHAT DOES IT MAKE ME FEEL LIKE TO
 KNOW THAT SOMEONE REALLY NEEDS ME? WELL HONEY
 KNOWING THAT IT'S YOU IT MAKES ME FEEL DAMN
 GOOD! AN BABY I WILL NEVER TAKE YOU FOR GRANTED
 I PROMISE! AN ~~HOW~~ ^{HOW} YOU KNOW THAT THIS AINT NO
 GAME WITH YOU? WELL YOU LOOK BACK TO JANUARY 13TH
 2001 TO NOW AN ~~FOUR~~ ^{FOUR} IT NOT AS TELL ME IN THE MEAN TIME!

THAT THIS IS A GAME. DONNA I HAVE TO MUCH FOR
 FOR YOU TO PLAY A GAME WITH YOU! SOMEONE ELSE
 YES! YOU HELL NO! BECAUSE YOU ARE I ^{MY} PRIDE
 SO DON'T EVER THINK THAT! AN AS LONG AS YOU
 KEEP THAT BULLSHIT IN YOUR HEAD YOU'RE ALWAYS
 GONNA BE SUCKED UP! AN YOU STILL DON'T BELIEVE
 ME AN THATS WHATS PISSING ME OFF! I MEAN YO
 ASKED FOR THE TRUTH AN I GAVE IT TO YOU BUT
 YOU'RE STILL PLAYING ME LIKE I REALLY HAD SOMETHING
 GOING ON, ESPECIALLY WHEN I TOLD YOU THE HONEST
 TO GOD TRUTH, SO HOW COULD YOU KEEP BRINGING
 UP SHIT THAT YOU READ THAT WASNT REAL? TALKING
 ABOUT WHAT I TELL YOU - YOU CAN THINK OF ME
 SAYING IT TO HER, WELL DONNA YOU REALLY ARE SUCKED
 UP AINT YOU? FOR THE LAST TIME I DON'T EVER
 WANNA HEAR ABOUT THAT SHIT AGAIN! EVER! BECAUSE
 DAMN IT YOU CANT SEE WHO THE FUCK I REALLY
 LOVE AN NEED? huh? BABY I'M SORRY! BUT I'M
 JUST TIRED OF HEARING ABOUT IT, DONNA YOU KNOW
 I LOVE YOU, AN NEED YOU, I MEAN MY LETTERS CANT
 TELL? I MEAN BABY LOOK HOW MUCH I WRITE TO
 YOU? AN BABY YOU ARE THE ONLY ONE THAT I
 WRITE BECAUSE I HAVE NO TIME FOR KNOW-ONE
 ELSE, DONNA DO YOU REALLY REALIZE THAT YOU ARE
 ALL I HAVE? NO READ THAT AGAIN! AN I MEAN
 I TRULY LOVE YOU! DONNA I LOVE YOU!!!
 AN I NEED YOU IN MY LIFE! AN I KNOW YOU
 SAID THAT YOU DONT WANT ME TO BE STRUNG OUT

OVER YOU, BUT DONNA THIS IS SOMETHING THAT I C
 HELP, BECAUSE IT ALL GOES WITH THE LOVE AN MY
 FEELINGS. SO THAT PART I CANT HELP, AN IF I
 COULD I WOULDN'T WANT TO ANYWAY BECAUSE I SEE
 GOOD BEING SICKING OUT OVER YOU. BECAUSE THAT IS
 ME KNOW THAT YOU ARE NOT GOING KNOWHERE.

AN YOU SAY YOU KEEP THINKING ABOUT THE FIRST
 DAY I COME HOME AN DO I THINK THAT WE'LL MAKE
 LOVE ON THE FIRST DAY? WELL HELL YEAH! NO MATTER
 WHAT! AN EVEN IF I GOTTA COME TO THE HOUSE AN
 SHOOT ROBERT IN HIS FUCKING HEAD YOU'RE GONNA BE
 WITH ME. AN DO YOU KNOW WHAT MANDATORY MEANS?
 WELL ITS MANDATORY THAT WE BE TOGETHER. AN YES I
 DO BELIEVE THAT I'LL BE IN THIS CELL UNTIL DEC. 9TH
 BUT I JUST GOT A LETTER IN THE MAIL AN IF YOU
 REMEMBER I TOLD YOU THAT I HAD WROTE COLUMBUS
 TRYING TO GET DOWN THERE WHERE MY BROTHER IS AT
 AN THEY JUST SENT ME A LETTER SAYING THAT THEY HAVE
 TO CHECK THEY FILE AN IT HAS TO BE DECIDED THROUGH
 A PANEL SO I'LL JUST WAIT AN SEE WHAT'S GOING ON.
 BUT UNTIL THEN HELL I DONT HAVE MUCH TIME LEFT
 BECAUSE I'LL BE HOME NEXT MONTH AN BY THE TIME
 YOU GET THIS LETTER I KNOW THAT IT WILL BE NOW!

AN YES DONNA MARIE I AM MORE THAN SURE
 THAT YOU ARE THE ONLY ONE THAT I'M COMING HOME

POINT IN MY LIFE, BECAUSE I LOVE YOU! AN KNOW
 PROBATION! SO WE REALLY DON'T HAVE TO WORRY ABOUT
 GETTING CHECKED UP ON, SO THAT'S THAT! I'M COMIN'
 HOME TO MY BABY AN MY BABY ONLY! DONNA
 MARIE ROBERTS JACKSON HOW WOULD YOU LIKE MY
 LAST NAME? YOU WANT IT? REALLY DO YOU? NO
 YOU TELL ME HOW MUCH LOVE DO YOU THINK THAT IS?

DONNA I LOVE YOU AN I WANT YOU TO MARRY
 ME, AN DONNA - I MEAN THIS FROM MY HEART! WIL
 YOU MARRY ME AFTER I TAKE CARE OF THINGS?
 SERIOUSLY! WILL YOU? I LOVE YOU DONNA.

WELL I'LL CLOSE FOR NOW

P.S.

HEY DON'T FORGET
 TO GET THE BEST
 WEED, A SMALL BOTTLE
 OF ~~HENNESSY~~ ^{HENNESSY} AN A
 BOX OF BLONIS, SO
 WE CAN HAVE OUR WAY
 AN I WANT THE BEST
 HOTEL WITH A JACUZZI
 SO WHEN THE TIME COMES
 JUST MAKE RESERVATIONS OKAY?

I LOVE YOU
 NOW AN FOREVER

NATHANIEL EDWIN JACKSON
 LOVES
 DONNA MARIE ROBERTS
 ONLY!

P.S.

I'LL HAVE YOU SOME
 CUM ON MY NEXT
 LETTER I PROMISE

LOCAL
8075 S. Avon Beloon Rd.
Gratton, Ohio

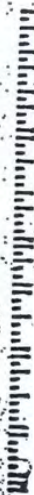
44044

DONNA MARIE ROBERTS
P.O. Box 1483
WARREN, Ohio

44182



44482+1483



HEY YOU!

FRIDAY OCT. 26, 2001

7:45 P.M.

WHAT'S GOING ON WITH MY BABY? AM I
ARE YOU? BABY I MISS YOU SO MUCH. AM CAN'T WAIT
TO BE WITH YOU SO THAT WE CAN SHARE OUR LOVE
JUICES TOGETHER, AM THIS TIME DONNA I WANT YOU TO
LET IT ALL OUT AM I DON'T CARE HOW LOUD YOU THINK
THAT YOU ARE YOUNG. SCREAM BABY I WANNA HEAR IT ALL
AM THEN I'LL REALLY KNOW THAT I'M DOING RIGHT! SO CAN
I HEAR IT ALL THIS TIME? PROMISE? I MEAN BABY LET
IT ALL OUT BECAUSE I DON'T WANT YOU TO HOLD
NOTHING BACK FROM ME, AM THE MORE I HEAR YOU
SCREAM THE HARDER I HIT IT. AM THE SAME GOES
WHEN I EAT THAT PUSSY. BABY IF YOU GOT ANYTHING TO
SAY BABY JUST SAY IT BECAUSE THAT TURNS ME ON SO
MUCH WHEN I HEAR YOUR VOICE WHILE WE'RE HAVING SEX.
AM SOMETIMES JUST YOUR VOICE ALONE MAKES ME CUM SO
GOOD AM HARD. AS YOU CAN SEE I DON'T HOLD BACK ON
NOTHING BECAUSE YOU ARE MY WOMAN SO I FEEL GOOD
EXPRESSING MY SEXUAL FEELINGS WITH YOU, BECAUSE YOU
ARE SO DAMN GOOD! AM I WANNA MAKE SURE THAT
I'M AS GOOD FOR YOU AS YOU ARE FOR ME. DONNA
YOU ARE DAMN GOOD! SO LISTEN HERE EVEN IF YOU
CAN'T SPEND THE WHOLE NIGHT WITH ME, I STILL GOTTA
SEE YOU BECAUSE YOU HAVE TO BRING ME SOME MONEY
SO I CAN GET A HOTEL ROOM, AM LIKE I SAY JUST TELL
HIM THAT TAUSHIA WANT YOU TO WATCH THE KIDS WHILE
SHE TAKES THE BABY TO THE HOSPITAL, SO THAT WAY
WE CAN ATLEAST GET ^{TO} SPEND SOME TIME TOGETHER.

AN THEN AFTER ^{THAT} YOU DONT EVER HAVE TO WORRY AGO
 MAKING KNOWMORE EXCUSES TO HIM, BECAUSE HE WILL
 NO LONGER BE WITH US AFTER 12-10-01 R I P
E N I
S S
T S AN
 THEN IT'LL BE ME AN YOU TOTALLY AN
 COMPLETELY, HEY! GUESS WHAT I FOUND
 THE OTHER DAY AFTER I GOT OUT OF THE SHOWER? WELL I
 WAS COMBING MY HAIR AN GREASING IT AN THERE IT WAS
 A STRING OF GRAY HAIR, YOU'RE STILL GONNA LOVE ME
 AINT YOU? ☺ HEY I LOOKED AT IT AS A GOOD SIGN
 BECAUSE I WAS BLESSED LONG ENOUGH TO SEE A PIECE OF
 GRAY. WHAT YOU THINK? SO WHAT'S GOING ON WITH MY
 BABY? DONNA I REALLY LOVE YOU SO MUCH! AN I'M
 GONNA KEEP LOVING YOU AN NOW ALLS I DO IS SIT HERE
 AN STARE AT MY BABY'S PICTURES AN SPEAKING OF PICTURES
 THEY SENT THE OTHER ONES BACK SO AS SOON AS THEY
 GET BACK MAIL THEM RIGHT BACK TO ME BUT THIS TIME
 YOU HAVE TO PUT THREE IN EACH LETTER SO SEND THEM
 ALL BACK BUT JUST PUT THREE IN EACH LETTER BECAUSE
 I DIDN'T KNOW THAT I COULDN'T HAVE THEM ALL AT ONE
 TIME, BABY THIS PLACE IS SO STUPID AN KEEP SENDING ME
 ENVELOPES TOO BUT DONT PUT THE ENVELOPES IN THE LETTER
 WITH THE PICTURES, AN DONT WORRY ABOUT WRITING PAPER
 BECAUSE I HAVE ENOUGH OF THAT NOW, AN PUT YOUR
 PUSSY IN THE MAIL TO SO THAT I CAN EAT IT. YUMMY!
 BABY I LOVE YOUR PUSSY BECAUSE IT'S THE BEST! SO
 ARE YOU GONNA GO AHEAD AN OPEN UP TO ME COMPLETELY
 AN LET EVERYTHING OUT! PROMISE! AN YOU KNOW THE PART

3

SAID THAT WE'LL MAKE LOVE UNTIL WE ARE BOTH EXHAUSTED
 AN THEN YOU'LL JUST SUCK MY DICK WHILE I JUST LAY
 THERE AN EVER IF IT'S SOFT YOU'LL ^{JUST} ~~BE~~ KEEP SUCKING IT
 WELL DONNA THAT'S JUST WHAT I WANT AN I WOULD LOVE
 THAT SO MUCH TO JUST LAY THERE AN LET YOU SUCK THIS
 DICK AS LONG AS YOU WANT. WILL YOU DO THAT? AFTER
 WE FINISH MAKING LOVE TO WHERE WE CAN'T GO KNOW MORE
 AN JUST SUCK MY DICK UNTIL YOU GET TIRED? AN ANOTHER
 THING I READ IN YOUR LETTER WHERE YOU ASKED ME DO
 I THINK YOU'RE PRETTY? AN DONNA YOU KNOW I ALWAYS
 TOLD YOU THAT YOU WERE BEAUTIFUL AN YOU USE TO TELL
 ME STOP, WELL JUST TO LET YOU KNOW HELL YEAH YOU'RE
 BEAUTIFUL AN I LOVE YOU SO MUCH OKAY? WELL AS FAR
 AS THE C.O. GUY JUST ASK HIM COULD HE PLEASE STOP
 BOTHERING ^{you} BECAUSE YOU DON'T WANNA BE RUDE BUT HE'S
 MAKING YOU FEEL THAT HE'S TRYING TO FORCE HIMSELF
 ON YOU, BY HARRASSING YOU, SO ASK HIM ONE MORE
 TIME COULD HE PLEASE STOP CALLING IF IT AINT ABOUT
 A BUS TICKET BECAUSE YOU DON'T WANT NOTHING TO DO
 WITH HIM, BECAUSE YOU DON'T LIKE TO BE FORCED UPON
 NOTHING THAT YOU DON'T WANT, AN YOU DON'T WANT HIM
 SO PLEASE STOP OFFERING YOU OUT, AN TELL HIM JUST
 LIKE I WROTE IT DOWN. AN I CAN'T WAIT UNTIL
 DECEMBER, AN ASK HIM DO HE HAVE A PROBLEM WITH
 GETTING HIM A WOMAN? AN IF HE SAYS NO WELL THEN
 TELL HIM WHY DON'T HE GO AN GET ONE AN LEAVE YOU
 ALONE BECAUSE YOU DON'T WANT KNOW PARTS OF HIM AN
 IF HE DON'T GET IT THEN. WELL JUST SCARE HIM WITH

THE HARRASMENT CHARGE AN I BET HE'LL LEAVE YOU
 ALONE THEN. WELL I JUST READ OVER ONE PART ^{WHERE} ~~AND~~
 YOU SAID HE SAID THAT I'LL JUST HURT YOU AGAIN WELL
 DONNA WHAT DO HE MEAN I'LL HURT YOU AGAIN? YOU
 SEE THAT'S WHERE YOU GET YOUR SELF IN TROUBLE AT
 BECAUSE YOU THINK EVERYBODY IS SO NICE AN YOU
 WANNA BE SO FUCKIN FRIENDLY AN START POURING YOU
 INSIDES OUT TO SOMEONE THAT YOU DONT EVEN KNOW
 AN MAYBE IF YOU WOULDN'T BE TELLING EVERY FUCKING
 BODY ^{OUR} ~~THE~~ BUSINESS WELL THEY WOULDN'T KEEP TRYING
 TO HIT ON YOU. FOR ONE I'VE ALWAYS TOLD YOU THAT
 YOU DONT HAVE KNOW RIGHT TELLING ANYBODY THAT I'M
 LOCKED UP BECAUSE YOU AINT DOING NOTHING BUT OPENING
 YOURSELF UP, AN THEN IF YOU STOP TRYING TO BE SO
 FRIENDLY TO EVERYBODY MAYBE YOU WONT HAVE TO WORRY
 ABOUT THAT PEOPLE, BUT NOT ONLY FRIENDLY! STOP TELLING
 MY ~~THE~~ BUSINESS TO PEOPLE I DONT KNOW! AINT NONE
 OF THEY'RE FUCKING BUSINESS WHERE YOUR MAN IS AT
 AN BABY I'M SORRY THAT I CAME DOWN ON YOU SO
 HARD BUT YOU GOTTA LEARN MY WAY IF YOU'RE GONNA BE
 WITH ME, BECAUSE LIKE I SAY I KNOW THE GAME! AN
 THE GAME IS SHRUDE! BECAUSE ITS LIKE THIS I DONT KNOW
 YOU FROM A CAN OF PAINT RIGHT? AN YOU TELL ME YOU
 GOTTA MAN, WELL OKAY I HEARD YOU BUT I DONT CARE
 AN IF I DID I WOULD HAVE RESPECTED THE FACT AN
~~MOVED~~ ^{MOVES} ON BUT KNOW I WANNA FUCK YOU SO I'M
 GONNA STILL KEEP AT YOU AS A NICE FRIEND, BUT

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SO I'M GONNA KEEP ON WITH DINNER OR MAYBE A
 MOVIE OR EVEN A WALK IN THE PARK, BUT I KNOW YOU
 GOTTA MAN. AN YOU ALWAYS TELL ME HOW MUCH YOU
 LOVE HIM SO I KNOW THAT YOU'RE NOT GONNA LEAVE
 HIM, AN I KNOW THIS BUT I JUST KEEP AT YOU
 BECAUSE I JUST WANT WHAT I COME FOR? AN THAT'S
 THE PUSSY OR MY DICK SUCKER. AN WHY SO I CAN
 HAVE SOMETHING TO TELL MY NIGGAS YEAH I FUCKED THE
 WHITE BITCH FROM THE GREYHOUND STATION AN SHE SUCKER
 MY DICK AN THE BITCH GOTTA MAN THATS IN THE JOINT AN
 SHE'S OUT HERE FUCKIN AN THEN YOU'RE LABELED AS A
 HEE BECAUSE WHY ELSE WOULD I WANNA BE YOUR FRIEND
 WELL I GOT MY OWN JOB, MY OWN CAR SO ITS SOMETHING
 THAT I'M MISSING? EXACTLY THE PUSSY I MEAN WHY ELSE
 WOULD I KEEP AFTER YOU AN KNOWING YOU GOTTA MAN
 AN HE FIGURED IT OUT JUST AS HE PLANNED IT WELL I'LL
 CALL AN SAY GOOD MORNING AN SOFTEN HER UP A LITTLE AN
 THEN MAYBE LATER ON I'LL THINK OF SOMETHING ELSE SURE
 AN SOFTEN HER UP A LITTLE MORE, BUT ALL THIS TIME YOU'RE
 THINKING THAT THEY'RE YOUR FRIENDS, WELL THERE IS KNOW
 FRIENDSHIP WHEN WE DON'T HAVE KNOW UNDERSTANDING
 BECAUSE IF YOU CAN'T RESPECT THE FACT THAT I'M WITH
 SOMEONE AN LOVE THEM WELL THEN WE AINT GOT NOTHING
 TO TALK ABOUT, BECAUSE DOWNA WHEN YOU SIT THERE AN
 TALK TO SOMEONE ON THE PHONE WELL YEAH I'M GONNA
 CALL BACK TO, DOWNA YOU HAVE TO TELL THEM STRAIGHT OUT
 THAT THIS IS A PLACE OF BUSINESS AN NOT KNOW
 DATING GAME AN THE SAME AS IT IS.

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YOU'RE SCARED TO HANG UP ON THEM, I MEAN YOU HANG
 UP ON ME! DONNA YOU HAVE TO STOP BEING SO LOOSE
 BECAUSE IF ~~THEY~~ ^{THEY} SEE A LOOSE OPENING ~~THEY'RE~~ ^{THEY'RE} GONNA TRY TO
 GO IN IT AN BABY YOU GOTTA LET THEM KNOW! FUCK
 PLEASE! LISTEN HERE STOP PRESSING ME! BECAUSE I DON
 WANT NOTHING YOU HAVE TO OFFER THANK YOU AN HAVE
 A NICE DAY, OR DO THAT MAKE YOU IMPORTANT BY
 HAVING A LOT OF FRIENDS AN THEY ALL ARE GUYS! AND
 BABY I DON'T GIVE A FUCK ABOUT KNOW FRIENDS, BECAUSE
 YOU ARE THE ONLY FRIEND I NEED. AN BABY I'M NOT
 SAYING ALL OF THIS TO MAKE YOU TURN AGAINST PEOPLE
 BUT BABY I LIVED THAT LIFE AN I HAVE DONE THEM
 THINGS IN THE PAST, I MEAN YOU AINT MY FRIEND IF
 YOU CANT RESPECT THE FACT THAT I TOLD YOU THAT I'M
 WITH SOMEONE AN THAT I LOVE THEM, BECAUSE WHAT DO
 I LOOK LIKE GOING OUT WITH SOMEONE THAT MY MATE
 DON'T EVEN KNOW AN I REALLY DON'T EVEN KNOW. SO
 ALLS I WOULD BE DOING IS DISRESPECTING MY MATE
 AN THATS WHY I SAY THAT THOSE ARE HOW TYPE OF
 FRIENDS NOT THE ONES THAT TRY TO GET YOU TO
 DISRESPECT YOUR MATE. AN BABY I KNOW YOU WON'T
 DO THAT BUT I'M JUST LETTING YOU KNOW HOW THE
 GAME GOES ESPECIALLY WHEN YOU THINK THAT THEY ARE
 SO SWEET BECAUSE THAT ALONE HURTS ME ITSELF WHEN
 YOU TELL ME, BECAUSE THERE IS KNOW OTHER SWEET
 WOMAN AN I DON'T CARE HOW NICE SHE BE TO ME
 OR HOW FRIENDLY BUT ITS ONLY ONE SWEET ONE PAI

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WRITE AN TELL ME HOW HANDSOME ANOTHER MAN IS
 OR HOW SWEET THEY ARE BECAUSE RIGHT THERE YOU'RE
 JUST LETTING ME KNOW THAT YOU'RE LUSTING, BECAUSE
 I COULDN'T NEVER FIX MY MOUTH TO TELL ANY WOMAN
 THAT ABOUT ANOTHER WOMAN BECAUSE THAT MAKES HER
 FEEL LET DOWN, AN BY YOU TELLING ME THAT JUST
 MAKES ME MAD, AN I DON'T WORRY ABOUT GETTING LET
 DOWN BECAUSE I KNOW I'M A CHARM BUT ITS JUST
 WHERE WE COME FROM WE DON'T SAY THINGS LIKE
 THAT BECAUSE IT WOULD CAUSE A FIGHT, BECAUSE YOU
 DON'T NEVER TELL ME HOW HANDSOME ANOTHER MAN
 LOOK AN I DON'T NEVER TELL YOU HOW GOOD ANOTHER
 WOMAN LOOK, BECAUSE ITS ABOUT US! BUT DON'T WORRY
 BECAUSE I'M GONNA BREAK YOU IN JUST THE WAY I
 WANT YOU AS SOON AS I TAKE CARE OF BUSINESS AN
 ITS GONNA BE MY WAY OR NO WAY YOU HEAR? AN
 DONNA YOU KNOW THAT I'M JEALOUS SO PLEASE STOP TELLING
 ME HOW SWEET YOU THINK ANOTHER GUY IS OR HOW
 HANDSOME YOU THINK HE IS, BECAUSE I DON'T CARE
 TO KNOW, AN ALLS THAT DO WHEN YOU TELL ME HOW
 SWEET ANOTHER MAN IS - IS JUST MAKE ME THINK
 THINGS THAT I DON'T WANNA THINK, BUT NOT SAYING
 YOU GOTTA STOP TELLING ME EVERYTHING BUT THAT HANDSOME
 AN SWEET SHIT GOTTA GO, BECAUSE I DON'T CARE TO
 KNOW ABOUT ANOTHER NIGGA OKAY? SO STOP THE MADDNESS
 AN BABY I'M NOT SAYING THAT YOU ARE GETTING LECTURED
 BY ME BUT SOMETIMES DO YOU STOP AN THINK OF

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OR WHAT MIGHT HAPPEN IF YOU GET TO FRIENDLY WITH THEM AS YOU PROBABLY DO EVERY OTHER BLACK MAN THAT COMES IN THERE, AN TELL THAT C.O. LIKE THIS IF YOU HAVE TO CALL HIS JOB ABOUT HIM HARRASSING YOU WELL YOU WILL AN BELIEVE ME HE DON'T WANT KNOW NAME LIKE THAT AN PUT A BIG SIGN OUT THERE THAT SAYS NO LOITERING FOR BUSINESS PURPOSES ONLY! ALL OTHERS WILL BE PROSECUTED! THANK YOU. AN WHEN HE COMES IN JUST LET HIM KNOW THAT YOU WOULD LIKE FOR HIM TO LEAVE YOU ALONE, BECAUSE YOU HAVE A BUSINESS TO RUN. AN DONNA I KNOW THAT YOU ARE FAITHFUL AN TRUE AN THAT'S WHY I LOVE YOU SO MUCH BECAUSE YOU ARE A REAL WOMAN AN YOU LET YOUR MAN KNOW EVERYTHING THAT'S GOING ON, AN DON'T WORRY BABY BECAUSE YOUR MAN WILL BE HOME REAL REAL REAL SOON, AN BY THE TIME YOU GET THIS LETTER IT SHOULD BE 39 DAYS LEFT 5 WEEKS TWO DAY AN THEN I CAN SHOW YOU JUST HOW MUCH I MISSED YOU AN JUST HOW MUCH I NEED YOU. HEY DONNA JUST THINK COME 12-11-01 YOU'LL BE WAKING UP TO ME OR MAYBE WE'LL GIVE IT A COUPLE OF DAYS TO LET THINGS LOOK COOL AN THEN AFTER THE FUNERAL BABY WHEN I COME HOME I'M NEVER LEAVING AN WE'RE ONLY DOING IT LIKE THAT JUST TO MAKE IT LOOK GOOD, BUT THEN AGAIN WELL WE'LL SIT DOWN AN DISCUSS THIS WHEN I COME HOME, AN DON'T WORRY BECAUSE I'M GONNA BE ALRIGHT OKAY? AN I PROMISE YOU THAT, AN THE

ALLS I NEED IS FOR MY BABY NOT TO WORRY AN
 LEAVE EVERYTHING ELSE UP TO ME AN I TOLD YOU
 DONNA THAT I'M TEVERLY IN LOVE ~~WITH~~ ^{WITH} YOU AN THAT
 WHY ITS TIME THAT WE REALLY BE TOGETHER BECAUSE
 I'M TIRED OF MY BABY TAKING ALL OF THAT MENTAL
 AN PHYSICAL PUNISHMENT WHEN SHE DOESN'T HAVE TO, AN
 YES DONNA I LOVE YOU ENOUGH TO DO WHATEVER I
 HAVE TO DO TO BE WITH YOU I LOVE YOU DONNA
 BABY I REALLY DO. WELL I'M GONNA CLOSE FOR
 NOW AN JUST KEEP PARKING THE CAR AROUND THE FRONT
 BECAUSE I DON'T WANT YOU LEAVING FROM OUT BACK
 AN ONCE I GET OUT, ITS GONNA BE ALRIGHT BECAUSE
 DADDY WILL BE THERE OKAY?

I LOVE YOU !!
 I MISS YOU !!
 I WANT YOU !!
 I NEED YOU !!
 I GOT YOU !!

NOW YOU WONDER
 WHERE YOU GET
 SO MUCH TO SAY
 AT NINE PAGES
 DONNA - WOW, AND
 IT MAKES ME FEEL
 GOOD TALKING TO MY BABY

I LOVE YOU DONNA MARIE FOREVER !!

P.S.

DON'T FORGET WHEN THE
 PICTURES COME BACK TO
 SEND THREE IN EACH LETTER

AN DON'T FORGET WHAT
 I TOLD YOU

Monday Nov. 26 1:00 PM

12 DAYS!

My dearest sweetheart,

I love you so much honey! And I wish you could see me + feel me + my warmth when I say that so you could really know how much those 3 words mean when they come out of this mouth. This mouth is yours too! What'da gonna do with it?

Note, the more I spend time here at work + meet certain people, the more I learn about the nature of people. I guess I have always been too trusting + too gullible because I never had any reason not to be. You have to remember, I worked for a high class Miami ^{PLASTIC} surgeon, the top of the medical line. The people I met there for 25 years were quite affluent. The only exposure I had to the streets were at Thanksgiving + Christmas when I'd go + feel the needy. Our patients were high class people who could drop \$10,000 - 50,000 just to look + feel better! In cash - no insurance covers cosmetic surgery. Even the drug dealers who had accidents + needed scar revisions had class + money. I lived in such a protected + different world + therefore never developed instincts or knowledge of the real life out there. Even Michael's dad + I went to college together + he was a scientist + teacher + marine biologist. So please - before you get short tempered when I fuck up - remember - I am just ignorant when it comes to another lifestyle. I mean - remember when we met? I never thought not to trust you or to be leery of you. Never once. I mean I really didn't know you or your history. See how I am? Well, make that WAS. Because I am sure learning the hard way. I mean you're dealing with an older woman who didn't fear going in the hood to buy drugs you know! Any one with 1/2 a brain would have been scared shitless. Plus, I always felt like someone was always watching over me + I guess they were cause I'm still here!

So please don't get angry with me if my guard is not always up because I am still just your new student in life! And I know that you will teach me well. In fact, I am 100% depending on you. For real.

Now speaking of being dumb, well I am so fucking pissed off about that gun. You just can't fathom exactly how very very pissed off I am. **PISSED OFF & FUCKED UP.** That was a beauty.

So I went to where he works, gave him one chance to return gun + money + he said he didn't have it (what else?) and I called the police. After waiting 1/2 hour I called back + they then said I need a different police dept, and by then I had to come back to work. So I called + they said I could come in after work. Oh - and the bastard called me this morning again! I didn't talk to him or say a word until I got to his job. Oh - he's gonna get his that's for sure! Oh yes because one minute after the 5:15 bus leaves here tonight - I am at the police station. And now he can sweat it out. And to think of all the shit he tried on me! Never again. You see - one son of a bitch ruins it for everyone + the next person wonders why you don't trust them one iota.

So don't you worry your pretty head about it + let's go on with our lives. Okay? And I'll report it missing + contact State Farm, and do whatever comes next. It only worries me what he might do because he got all fucked up every time I said "no, I love hate." He may come here + shoot me with my own gun. But I have my .38 S&W right here by my right hand + if he comes barging in here he's a dead man cause I am a very good shot. An excellent shot baby. And when it comes down to protecting myself, my son or you - look out - I am a different person - I am a fucking animal. You really don't ever want to see me like that. Remember inside this gentle veneer is a woman who has given CPR to dead people trying to get them back + sewn people back together + worked in 2 wars + I lived right in North Miami Beach for 28 years! Okay? So don't

ever think I am a complete burden on you. I am tough when I have to be. And also, you know that when I want something bad enough, I'll do anything + everything I have to. Like you. I want you Nate. And you see what I have done to be with you if only for an hour. In fact, if only to come + see you + get a hug + kiss.

I love you so much honey. Gee, it makes me feel so good when I say that. I love you Nate.

Thank you for the list in advance. I will love whatever you need for you but you already know that. Plus alot more + you know that too. I love to spoil you and be the one who makes you smile with happiness when you know + see who cares about you so much.

I was almost gonna get you silk boxes - they were in my hand - why didn't I. Damn! I'll go back + get them. I love to feel my baby's dick rubbing on it thru silk. Oh that is so sexy! And seeing it get big + hard + jolt against that silk. Hurry home! Silk covered dick - that's just the basic beginning for the man I love.

Now for the other thing. I only worry about losing you or losing me to incarceration. You know I will be the first one to face questioning. I don't want to have to get an attorney + defend myself. Oh + I have some info to add to our plan. You know there are phone records + CCA pass records. Well - everyone thinks he is gay - did you know that? It's been whispered alot in Jernytown. The good part is that he is the one who wrote + paid the checks on the phone bills - his writing. So - he knew about you. (Not Casey) But the whole phone thing could be good because it shows you were both of ~~our~~ ^{your} friend a friend to both of us. And maybe you were a real good friend of his. Anyway, your hair + prints could be anywhere since you drove the car + were here + all. But I think it's all gonna come down to me when I get that call. And I can handle that because it means everything to us both. I am not even worried about it any longer because I've thought

about it alot + am prepared. Instead of laughing and cheering, I will concentrate on losing someone that I would really get nuts over + react accordingly. Just tell me how you're gonna be here for weeks without anyone knowing - that will be a real phi trick. Huh? And after it's over, I can get a place for you even here in Warren for a couple weeks because who is to tell me not to? Oh - I have been all over looking for a phi mask. I only see those knitted caps. Any suggestions on who might have them? And I'm still looking for gloves because I don't think the thick ones I'm seeing are good to work with so would be thinner leather ones. Know what I mean?

And yes, sneaking to see you for a couple hours doesn't do it. It leaves us both with no real life together + when you go your way, you have to fend for yourself + eat alone + sleep alone + be out with the wolves. And me - I live exist in hell on earth. Like last night - I got so sick of just looking at him. And hearing the same shit over + over. And smelling his breath. And every other little thing - it's all bad. And seeing his skin. And watching him walk - or breathe. I can't hold in my disgust + contempt for him well at all + he sees it every time he looks at me now. Which makes him feel worse about me in return. Which makes him talk to me + treat me like dirt.

And that reminds me - when you get upset with me about talking to someone or trusting someone - I want you to think about how much I love you + what happened to me on 9/24. Then add him in. Now imagine how thoroughly fucked up I was. I was just about ready to give it all up. All up - even my life. It couldn't get any worse than it was then. I could barely manage each day for weeks. Plus being physically sick too. So you've got to give me a little leeway + not be too upset with me or think I was plain stupid. I had to talk to someone + even that took awhile before I could even talk. Have mercy on me.

It's 3:00 already. I was busy in between writing. Not busy enough though.

Well, I lost 2 more pounds + now it's beginning to be not so good. I look in the mirror + examine myself + I don't like what I see. Dry skin is starting to show! This is not good. Please don't look at me too close okay? But I really do look great in clothes again. You'll be proud of me by your side honey. Well, I sure hope so anyway.

I never got a chance to tell you what I did yesterday. I went to one of the apartments (the one I had to go to court + evict) and cleaned + painted walls all day. It was good to do something physical for a change. The good part is it is already rented again. To a woman + her daughter + I reduced the rent from \$400 to \$350 to get her in there - good business - better rental for a little less than to remain empty. While I was cleaning I wore rubber gloves - I don't even like to clean my own dirt! Then last night I started cleaning around the house. I did the one bathroom - boy was it a disaster! Tonight I'll do another room + go on until it's decent. I think the dust in the den is about an inch thick + you know there are a million knick knacks in there! Help!! The trick is for me to keep you in mind + it becomes a pleasure rather than work. I'd like to get some silk sheets but I'll have to wait 'til after I can use my charge accounts again. They are soft + sensual, don't you think?

Busy again. Busy again.

So how the heck are you anyway? I know you're all excited! Me too. In fact the sleepless nights are here again. I'm like a kid at Christmas - absolutely cannot fall asleep thinking about my own very special XMAS = 12/19. I wonder how the weed supply is. I haven't gotten any lately because I have to save up for other stuff. Like weed for US. And goodies + clothes + a room etc. I think I'll be able

to manage it all though. I'll figure out a way.
It seems like when it comes to you, I always do!

Last night while I couldn't sleep from like 11:00 - 3:00
I was thinking again about making love to you - the man
I love. Boy, I am so wild for that now that I was
thinking of every freaky thing I can do! I wonder how
you'll feel inside me after 3 months + one week! It has
taken a lot of imagination to pretend a little white finger
is a big black dick!! But loving you the way I do +
thinking of making love to you - well, it's managed to keep
that little kinky thing okay.

So how has your asthma been? Does it get worse
with any particular season? And what about the burning
on your head? Any more on that? And no more rashes,
right? I asked my gynecologist why a man would get
a rash on his dick + she said it could be a topical
skin allergy or a yeast infection. I didn't even know
men got that. Just take good care of your beautiful
eyes, your legs, your dick + your ass until '79 + we'll
be just fine!

Okay baby, I'd better close for now. I'll
write again when I get home + sorta spend the evening
with you as I've been doing.

You take good care + before you know it, I'll
be pulling up in that parking lot to get your sweet
ass! And load out!!! Just load out!

I love you Nathaniel.

P.S. My ass + my
boobs have gotten
a lot smaller -
will you still
love me?

Always yours,

Kenn Squire



Ms. Donna J. Jones
P.O. Box 1483
Lawrence, Ohio

44442+1423

Hey you's

TUESDAY NOV 27, 2001

4:50 P.M

I'm just sitting here thinking about my
 baby. How you were I love you. How are you doing
 today my love? And how did things work out about
 the son? Did you go to the hospital? Did he get
 work for that place? Please you better not never let
 him stop work for that hospital. Please for nothing
 if you're in there that from my heart, and baby please
 be extra careful on how you handle money in jail.
 Sure it's a secure place, but it's another thing. But
 you can get my blue jeans, tennis shoes, and
 my old jacket. And it's in the box, and I should
 have that yellow shirt with the blue on it, and if it
 is there get that out with it. And bring it, and as
 far as a note around here. And it's one about
 is written. Please show him in court and baby I
 hope things work out so you can come up here
 Saturday night.

Donna I've been doing a lot of
 thinking about the two of us, and also thinking about
 together on our future and my living plans for when
 I come home, and Donna my wife would
 be the one because if you go against me then
 what I want to the next day I come home
 because if you do that will just let me know
 that all of that happiness that we talked about was
 just really a dream, because if I can't take care
 of it the next day then the rest of my life.

IS CRUSHED AN OVER, BECAUSE FOR ONE I DON'T HAVE
 KNOW WHERE TO GO, I DON'T HAVE NO-ONE BUT YOU
 I DON'T WANNA TRY TO SURVIVE IN THE STREETS NO
 MORE, AN I DON'T WANNA COME BACK TO THIS PLACE
 OR NO OTHER PLACES, AN READY ITS GONNA BE WINTER
 TIME, SO I JUST HOPE I'M WRONG BY THINKING THAT
 YOU ARE GONNA BE AGAINST WHAT I'M GONNA DO, BECAUSE
 IF YOU DO JUST THINK ABOUT MY LIFE AN WHAT ITS
 GONNA BE LIKE FOR ME IF I CAN'T BE ABLE TO
 COME HOME TO YOU, AN DONNA THIS IS THE ONLY
 WAY WE CAN HAVE A LIFE, AN THAT WILL BE MY ONLY
 CHANCE AT DOING IT BECAUSE WON'T NOBODY KNOW
 THAT I'M HOME, AN YOU KNOW IF I DON'T DO
 IT THEN AN PEOPLE START SEEING US TOGETHER AGAIN
 AN IF WE DID PAY SOMEBODY TO DO IT YOU KNOW
 THE BLAME IS STILL COMING TO ME BECAUSE THEY SEE
 US TOGETHER AN THEN HE COME UP MISSING, BUT AS
 LONG AS THEY KNOW I'M LOCKED UP WELL THE FINGER
 CAN'T BE POINTED AT ME OR YOU, SO DONNA THIS IS
 GOT TO BE DONE THE NEXT DAY OR MY LIFE AN EVERY-
 THING THAT I EVER DREAMED ABOUT, THAT WOULD MAKE
 THE FIRST OF OUR LIFE WONDERFUL WOULD BE CEASING,
 BECAUSE WE WOULDN'T HAVE TO KEEP SNEAKING AN THEN WE WOULDN'T BE
 ABLE TO HAVE CHILDREN TOGETHER LIKE WE WANT AN EVERY OTHER
 WONDERFUL FROM THAT WE TALKED ABOUT WOULD BE JUST A
 DREAM, DONNA I HAVE TO DO THIS! BABY I LOVE YOU WITH
 ALL OF MY LIFE AN I CAN'T TAKE IT NO-MORE! DONNA

THAT lonely cold world any longer knowing that I
 can be coming home to you, AN I HATE TO RISK MY
 LIFE BY JUST WALKING INTO THE STATION AN GOING
 IT AN TAKING THE RISK OF GETTING AWAY, SO IF YOU
 REALLY WANNA BE WITH ME LIKE YOU SAY, AN IF YOU REAL
 WANT ME TO HAVE A REAL LIFE, WELL THEN YOU WOULD
 JUST SIT BACK DO AS I SAY DONT GIVE ME HINOW
 LECTURE AN LET THINGS GET DONE AN OVER WITH, BECAUSE
 THE NEXT LECTURE THAT YOU TRY TO GIVE ME I'M JUST GONNA
 CHANGE MY MIND AN ASK YOU TO NEVER TALK TO ME ABO
 IT AGAIN, BECAUSE DONNA YOU FAIL TO REALIZE THAT YOU'RE
 VERY WEAK WITH TRUE STREET SURVIVING, AN I SEEN CHUMPS
 LIKE HIM GET BUMPED OFF ALOT THROUGHT MY LIFE AN
 AINT NOTHING NEVER HAPPENED, SO IF YOU DONT WANT TH'S
 DONE JUST TELL ME, AN I DONT WANNA KEEP HEARING
 THAT SHIT ABOUT WHAT IF! FUCK WHAT IF! I CAN ONLY
 GO BY WHATS HAPPENING AT THAT TIME, BECAUSE IN STREET
 LIFE WHAT IF IS BAD LUCK AN I HATE THAT WORD MORE
 THAN I HATE THE LIFE I'M LIVING, SO IF I TELL YOU I'M
 GONNA BE ALRIGHT AN I KNOW WHAT I'M DOING, ALL I
 SHOULD HEAR COMING FROM YOU IS BABY JUST BE CAREFUL
 BECAUSE DONNA THIS IS MY LAST OPTION, BECAUSE I WONT
 HAVE A LIFE IF I DONT DO TH'S, BABY I NEED YOU! DONNA
 DO YOU UNDERSTAND THAT I'M SCARED TO BE IN THE STREETS AGAIN
 DONNA, BABY I LOVE YOU AN I NEED YOU IN MY LIFE
 DESPERATELY... WELL I'll close for now BABY JUST THINK ABOUT
 HOW FAR WE'VE COME, AN HOW MUCH LOVE THAT WE STILL HAVE

conclude

Nathaniel Jackson

Prison 2 yrs

at 3-4 days

he's black - single white and
has turned to a

wife a - person

and in for a

Ward

and is wife =

for 1 - 2314, 25

2940

(Sents)

↓

Prisoner

Age 40/45
in 8y 1/2

Marston family
sister

Judge Stewar &

Jim Crown

Just assigned

No restriction to both

COA - & guidelines -
regarding how that should be had fairly
during life style

influence →
(concerns
as to future)

get me in initiation of the relationship
letters - an indication in not was probably the killing?

days → During crack days of 1980s

for now? → Tel conversations - possible things
diff words) why not handled -

Sandra B. McPherson, Ph.D.

Clinical and Forensic Psychologist

12434 Cedar Road, Suite 15
Cleveland Heights, OH 44106

(216) 721-1961
fax (216) 721-1914

AUTHORIZATION TO RELEASE INFORMATION

TO: Rayon High
Youngstown City Schools

RE: Nathaniel Jackson

DOB: [REDACTED]

SSN: [REDACTED]

You are hereby authorized to release to:

Sandra B. McPherson, Ph.D.
Donald M. McPherson, MEd

and/or their agents or representatives any and all records or other documents which concern me and which are in your possession. You are hereby requested and authorized to permit the aforementioned individuals and/or their agents or representatives to examine and copy any and all of my medical, psychological, legal, education, and/or employment records or any other records they may deem necessary in their work on my behalf. You are further authorized to discuss these records and any other matters concerning me with the foregoing individuals and are asked to assist them in the current investigation.

Signed: Nathaniel Jackson

Date: 8/19/02

Witness: Donald M. McPherson

Date: August 19, 2002

135

Mr. Schuly said OK to

of a Mr. McPherson, psychologist, working with the
 Nathaniel Jackson ^{for} Lewis & Connelley ^{defense team.}
 called him

helpful around house

good qualities.

have you attended any of his trial, been following it.

can you attend the sentencing trial and make a statement
 pleading for his life.

Birth normal

Early childhood

Said he had a lot of behavior problems in school.

Did you know anything about Nathaniel relationship
 with Anna Roberts

First legal
 problems 1950, about this time he transferred to the transition school

26 H22

30 H11

As soon as he was in trouble

35 Jackson [redacted] - uncle, brother of Nathaniel's mother

works
 No has 6 or 7 of these letters
 to [redacted] [redacted] [redacted]
 LA with a [redacted]
 [redacted]

12:30 p.m.

Office

11/19/85

or 11/20/85

This child exhibited signs of emotional illness — he was talking to himself, laughing out loud, jumping up and down, having conversation with invisible people, and playing with his imaginary dog "Butch." There was no one else in the office around him at this time — "empty seats."

I, Mrs. L. McElroy, walked into the office to get mail out of my mailbox and observed this student seated in the office.

Principal and other students were in the doorway. My presence did not distract or deter his actions, in the least.

Mrs. L. L. McElroy

11/26/85

Dear teacher.

Please Excuse Nathaniel Jackson from School Monday
He has to go to the place where the presentment
is Thursday at 1:30. So he Dont be in school there
at all. Please a woman and man should not him
So Dont take Nathaniel Back down to the place
offic. Wash. D.C. at 1:30 Thursday
Thank You
Mrs Pauline Kuenen

Seiser

Student Number: 0016-77-20

The Public Schools
Youngstown, Ohio
Department of Pupil Personnel Services

PSYCHOLOGICAL REPORT
Confidential -- For Professional Use Only

NAME JACKSON, NATHANIEL DOB [REDACTED] TEST DATE 1-17-86
 ADDRESS [REDACTED] SEX M REFERRED BY School
Charles/Pauline
 PARENT(S) Korneagay GRADE 7 SCHOOL Adams Jr. High
 HOME PHONE [REDACTED] C.A. 13-11 EXAMINER J. Seiser

REASON FOR REFERRAL Disruptive behavior. Low Achievement.

TEST RESULTS..

INTELLIGENCE

Wechsler Intelligence Scale for Children - Revised

Verbal I.Q. 72 Performance I.Q. 72 Full Scale I.Q. 73

Bender-Gestalt Test 1 Errors

ACHIEVEMENT

	<u>Grade Placement</u>	<u>Standard Score</u>	<u>Discrepancy Score</u>
<u>Reading</u>			
Woodcock-Johnson Letter-word Ident.	6.4	88	-1.0
Woodcock-Johnson Passage Compre.	4.6	75	-.13
<u>Math</u>			
Woodcock-Johnson Calculation	4.3	63	+1.67
Woodcock-Johnson Applied Problems (reasoning)	5.2	75	-.13

12-19-85 Vision Screening - Failed - Referred for further testing.
Hearing Screening - Passed

<u>Scales of Independent Behavior</u>	<u>Age Score</u>	<u>Standard Score</u>
Math Skills	12-3	92
Social & Communication Skills	6-5	55
Personal Living Skills	9-3	63
Community Living Skills	9-3	63
Broad Independence	9-0	58

NATHANIEL
High

page 3 of 5

scores may be depressed by a lack of cultural opportunities or by his impulsive responses.

Achievement. Nate's reading and math skills are fairly consistent with his measured ability. He demonstrated ability to decode words promptly. He made accent errors in more difficult words which it is suspected he would have correctly identified in context. His reading comprehension score was weaker and it appeared that he was losing interest. In the math calculation, he completed complex addition, subtraction with borrowing, some multiplication and division. He did one, double-division, division problem by doing repeated addition. He did not attempt more difficult division or fraction work. He was successful in solving word problems involving money. He had no difficulty in restating the word problem and seemed to know what was expected. A few careless errors depressed his math problem solving score.

A teacher checklist on his communicative status indicates that Nate's skills are below average. Further testing may be completed by the speech clinician.

Visual-Motor. Nate copied the nine Bender designs without error. His work was fairly well organized on the page. While some of the designs were weak in angulation, visual-motor maturity is adequate for his age.

Social-Emotional. The Scales of Independent Behavior, a measure of adaptive skills, was completed by Mrs. Pavlone, one of Nate's teachers. His gross and fine motor skills are appropriately developed for his age. Independent functioning is subaverage in the areas of social/emotional, personal living, and community living. Specific difficulties include negative peer interaction (hits, fights, name calling, accepts no criticism), inappropriate use of language (vulgarity), cleanliness in personal care, lack of personal responsibility for being in proper place at proper time, and poor work skills (little attention to tasks). Nate also demonstrates disregard for personal property.

The Hahnemann High School Behavior Rating Scale (HHSR), a classroom behavior rating scale, reflects many of these problems. Significant behavior factors on that measure which hamper educational progress include poor interaction, weak reasoning ability, poor work habits, expressed inability, and restless, disturbing behavior. Nate is on task occasionally but not for very long.

In the projectives administered (House-Tree-Person, Incomplete Sentences). Nate made no bones about the fact that he is aggressive, hates whites (except for one boy) and intends to hurt them or anyone else who tries to get "through him". There was no evidence of positive feelings towards anyone, including his teachers and parents. ("Ain't nothin' to me"). He projected the idea that he is afraid of nothing, including consequences of his own misbehavior and he admits he feels no guilt about

NATHANIEL
v. High

page 4 of 5

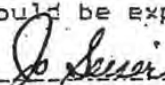
it. Nate wants to project a tough guy image and works hard at not letting down his guard. He did admit, but quickly retracted the statement that he is afraid of getting hurt.

He was openly hostile and antagonistic at the beginning of the testing session. While he did let down a bit, he never did relax in the session. It is possible that he views others as a threat and wants everyone to know he's not to be tampered with.

Summary and Recommendations

Nate's cognitive, academic, and social development scores are all at subaverage levels. As indicated, his behaviors in the testing may have depressed some of the scores somewhat but the ranges are probably appropriate. A major concern is the constant, open expression of hostility, both verbal and physical, towards others. It appears that this is often done without provocation and without a sense of guilt. Nate expressed deep prejudiced feelings and seems to believe it is right to act in aggressive ways. Several teachers have documented persistent, aggressive behavior in his classes which interferes with work production. Nate failed sixth grade classes for two years and is presently failing all classes in seventh grade. Without some intervention, it is conceivable that he will continue to fail and, also, could cause personal injury to others, including student and teachers. A team conference should be held as soon as possible, to review all data and determine appropriate interventions.

1. Nate needs to develop an appropriate set of standards and values to develop a conscience about his actions and to understand the consequences of behavior.
2. He needs to develop tolerance for those he perceives to be unworthy and to learn acceptable behaviors towards them. His prejudices seem to permeate his thoughts and behaviors. Disruptive behaviors must be remediated.
3. Positive interactive skills with peers and respect for authority need to be learned.
4. The possibility of substance abuse should be explored.


Jo Seiser
School Psychologist

fb

The Public Schools
Youngstown, Ohio
Department of Pupil Personnel Services

PSYCHOLOGICAL REPORT
Confidential -- For Professional Use Only

Name: Nathaniel Jackson	DOB: [REDACTED]	Report Date: 2-23-89
Address: [REDACTED]	Sex: M	Referred By: S. Gregor
Parent(s): Pauline Korneagay	Grade: 10	School: Stambaugh
Home Phone: none listed	C.A.: 17-0	Examiner: J. Ciarrochi

REASON FOR REFERRAL

Mandatory three-year reevaluation to determine if Nathaniel continues to qualify for special education services.

SENSORY EVALUATION

Testing by school nurse D. Halloran on 1-18-89, reveals that hearing is within normal limits. Nathaniel failed visual acuity screening. He passed the eye muscle balance test. No vision referral was made because Nathaniel was in the process of getting glasses at the time of the screening.

BACKGROUND INFORMATION

Nathaniel said that he lives with his mother, 18-year-old brother Charles 13-year-old sister Tasha, and ten-year-old brother Patrick. His brother Charles will be graduating from the transitional school this year.

Nathaniel was placed in the Severe Behavior Handicapped (SBH) program during his seventh grade year (2-18-86). Referring behaviors included disrespect toward authority figures, leaving the classroom without permission, disrupting the class, threatening others, and passive-aggressive behavior.

Nathaniel was placed at Stambaugh Transitional with teacher Sara Revetti for the remainder of his seventh grade year. He remained at Stambaugh for grade eight. Because of good behavioral progress, he was placed in a less restrictive setting, the SBH satellite unit at Rayen High School the following year. During this school year (1988-89), Nathaniel was transferred back to Stambaugh because of threatening, aggressive behavior. One day he burned his and another student's worksheets, lay across a table in the classroom, and refused to go to timeout. When the teacher

Confidential Psychological Report - N. Jackson

Page 2

Nathaniel's progress in the SBH program has been inconsistent, which may be due to periodic poor attendance. Current teacher, Suzette Gregory, said that his behavior is average for her class and that his academic progress is above average. Nathaniel is on the fifth grade level in math and on the eighth grade level in spelling and reading. He failed all subjects the second grade period because of poor attendance, but earned A's, B's and C's for the first grade period. Nathaniel is on Level IV of the five-step behavioral management system. His current problem behaviors are frequent talking out, including drug talk; trying to sleep in class instead of working; and resisting direction. In general, Nathaniel gets along adequately with peers and the teacher. However, he often teases others.

While Nathaniel was at Rayen, he had a vocational evaluation. The evaluation report stated that he had a low level of involvement and excessive absenteeism. He did interact adequately with co-workers and was receptive to supervision. Marginal consideration for a program was recommended.

CLASSROOM OBSERVATION

Nathaniel was observed for 20 minutes in Home Economics class on 2-16-89. Time-sampling at four second intervals and anecdotal observation were used. The three other boys in the class served as the rotating comparison peer. The activity observed was cleanup after cooking.

Nathaniel was on-task for more of the sampled intervals than was the rotating comparison peer (68% compared to 32%). His off-task behavior differed from that of the other boys in frequency, not in type. When Nathaniel was not on-task, he was walking around the room or talking with others.

TEST BEHAVIOR

During individual assessment, Nathaniel was sullen, but followed directions and put forth adequate to good effort. He was guarded and suspicious when asked to draw a picture of his family.

TEST RESULTS AND INTERPRETATION

OVERALL ABILITY

Stanford-Binet Intelligence Scale - Form L-M

Chronological Age:	17-0
Mental Age:	11-6
Quotient (IQ)	70

1st Period 11/7/80-

Nathaniel is doing satisfactory work in reading and enjoys reading. He spells his words correctly in tests, but does not complete his daily work. The same goes in Math & other subjects. He has shown some improvement, but still has difficulty in writing. His understanding of Math is very poor and he is attending Lamps.

I'm sure Nathaniel's work would improve if his behavior would improve. 9/80 - Reading Level 11

3rd Period 5/15/81

6/19/81 Completed Units 1+2 of unsatisfactory Level 12

Nathaniel is improving in Math and Working on his Writing. He still does not complete his work and is not progressing well in Reading. Nathaniel still does get into trouble and has not learned to control his behavior. He can be very nice when he tries.

6/19/81 Nathaniel wastes his time and does not do his work. He could do much better than he is doing. Nathaniel's behavior has shown some improvement, but he needs to improve much more.

D. Wilson

Nathaniel's parents came once after school. His father gave Nathaniel to understand that he is to behave himself & learn.

Passed to Grade 4 Rm. 206

6/19/81

Jackson Nathaniel

Reading Test BBD - shows

Competency in word structure, word perception
+ word meaning. Needs reinforcement in study skills
& needs reinforcing in comprehension skills.
- Reasonable, experience, details & understanding

Poor behavior - always talking - talks back
Vandal - fools around -

Finally settled down - Doing daily written
work of Group I - Tries to jump a book - but
it was too hard -

3/20 Completed 2¹ - Competent in everything
except needs reinforcement in comprehension
& study skills

Does well in SRA

6/10 Completed 2² - reader. Mustard Seed Magic
last week of school - Too late to be
tested -

Did 1 1/2 yrs reading this year -
Good reader - but fools around
all the time. Must be kept after to
do his work -

Promoted to 3rd room - Room 100

MAHONING COUNTY COURT OF COMMON PLEAS

JUVENILE COURT DIVISION

James M. McNally
Judge

September 19, 1989

Stambaugh Transitional School
2420 Donald Avenue
Youngstown, OH 44509

RE: Nathaniel Jackson
DOB: [REDACTED]

sent 9-26-89

Dear To Whom It May Concern:

Enclosed is a release of information form regarding the above captioned youth. I would appreciate a copy of his grades for the past school year and attendance record. Please include any disciplinary reports you may have available.

This information is to be reviewed by Mark Melnek, Probation Officer
~~prior to a dispositional hearing on~~

I appreciate your time and cooperation on this matter.

Sincerely,

Mark Melnek / my
Probation Officer

Nate Jackson

Nate attended class on 9/9/88, 9/12/88 and 9/19/88. At which times he became extremely unruly and verbally abusive.

9/9/88 - Received a total of 65 slips with most of them concentrated in the negative comment, talking out and swearing areas. Most favorite line "F-This shit! MAN!" received disciplinary referral slips on 9/12/88 for leaving area without permission and not returning after going to 4th bench.

9/13/88 - Arrived late would not get admit to class permit. Brought food in from home bacon and eggs. Caused great confusion other students tried to take some of the food ^{this} caused a fight between Raymond Waller and Nate. Mrs. Seemenda stepped in to separate the two and got bushed in the process. Nate after being separated from Raymond continued throwing bacon and other food around the room at other students empty milk carton on floor.

9/19/88 - Started the morning off by harassing Mrs. Quinn and her class. and was not permitted to leave the room. When told he became verbally abusive and then proceeded to light a piece of paper and then after extinguishing that a few minutes later tried to ~~light~~ ^{light} ~~burn~~ ^{burn} the ~~to~~ ^{to} on Patricia Roth's shoe. He did stop

THE PUBLIC SCHOOLS YOUNGSTOWN, OHIO
PUPIL'S ANNUAL SHEET
PRIMARY SCHOOL

101 To 102

BORN	MO.	DAY	YEAR	ENTRY DATE	YEAR MONTH AGE at SEPT. 1	SEX	(LAST NAME)	(FIRST NAME)	(MIDDLE NAME)
				9-5-78	6-7	M	Jackson	Nathaniel	Edw.
ADDRESS				PARENT		OCCUPATION		TELEPHONE	
Roosevelt				Charles Pauline		101		A. Stanley	
SCHOOL				SCHOOL YEAR		GRADE		ROOM	
				1978-79		1		101	

Marking code: Subjects printed in large capital letters will receive letter marks using the following code:

E = Excellent G = Good S = Satisfactory U = Unsatisfactory.

A ☒ indicates the need for improvement. The absence of checkmarks indicates satisfactory progress.

	Report Periods			
	1	2	3	4
READING	S	S	S	G
* Reading level (Ex. 21, etc.)	R P	P	P	K
Applies phonics skills				
Reads with understanding				
Knows basic sight words				
LANGUAGE	S	S	S	S
Expresses ideas well orally				
Expresses ideas well in written work				
SPELLING				
WRITING	U	S	S	S
MATHEMATICS	S	S	S	S
Knows number facts				
Works accurately with numbers				
Solves problems with understanding				
SOCIAL STUDIES	S	S	S	S
SCIENCE - HEALTH	S	S	S	S

	Report Periods			
	1	2	3	4
ART	S	S	S	S
MUSIC	S	S	S	S
PHYSICAL EDUCATION	S	S	S	S
Social Growth				
Conduct	U	U	S	U
Accepts responsibility	✓	✓		
Respects authority				
Respects rights & property of others	✓	✓		
Observes school and safety rules	✓	✓	✓	
Is courteous				
Works and plays well with others	✓	✓	✓	
Study Habits				
Listens well in class	✓	✓		
Follows directions	✓	✓		
Completes assignments				
Works independently	✓	✓		
Participates in class discussions				
Supplemental Programs:				

ATTENDANCE

KEY: E - ENTERED I - ABSENT A.M. ONLY X - ABSENT WHOLE DAY - NOT IN SESSION
W - WITHDRAWN \ - ABSENT P.M. ONLY O - TARDY (NO. MINUTES) EX - EXCLUDED

REPORT PERIOD BEGINS																	DAYS PRESENT	DAYS ABSENT	TIMES TARDY	DAYS IN SESSION	CAUSE OF ABSENCE
	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	
1 9/5			E			X	X	X	X									4 1/2	0	45	cold
2 11/10																		2 1/2	0	46	no excuse
3 1/29						X												2	0	44	no excuse
4 4/1																		1	0	43	no excuse



Youngstown Public Schools

Mayes School

250 Benita Ave

(School)

(Address)

Principal

F. Letts

Assistant Principal

Charles/Pauline

February 12, 1988

(Parent/Guardian)

(Date)

(Address)

Youngstown, Ohio 44506

(City)

This is to advise you that following a hearing, Nathaniel Jackson [REDACTED] has been
(Student) (I.D. No.)

suspended from school for 4 school days beginning February 16, 1988 He/she is
to return to school on February 22, 1988 The reason(s) for the suspension is/are
as follows: disorderly conduct; fighting
(Reason(s))

which violates Rule(s) No. 2 of the Student Conduct Code

While suspended, Nathaniel is not to be on school premises (grounds) during
normal school hours nor is he/she to attend any school sponsored activity.

Please follow the instructions as checked below:

☐ Please accompany _____ to school on _____ at _____ a.m.
for re-admittance and a conference in _____ office.
(Principal)

☐ Due to the serious nature of his/her actions, a Board of Education hearing may be scheduled. You will be
notified of the time and date should a hearing be scheduled.

☒ It is not necessary for you to accompany him/her to school.

You may appeal this decision to the President of the Board of Education or his designee. You may be accompanied by
a representative of your choice and may request that the hearing be held in executive session. If you intend to appeal,
please address a written request for a hearing within five (5) school days from the date of this notification to:

Office of School and Community Relations
Youngstown City School District
P.O. Box 550
Youngstown, Ohio 44501

cc: Treasurer



Youngstown Public Schools

W. H. School 250 Beatty Ave.
 (School) (Address)
J. S. Trifanico A. Cassano
 Principal Assistant Principal
Charles/Pauline January 20, 1988
 (Parent/Guardian) (Date)
[REDACTED] Youngstown, Ohio 44505
 (Address) (City)

This is to advise you that following a hearing, Nathaniel Jackson [REDACTED] has been
 (Student) (I.D. No.)
 suspended from school for 3 school days beginning January 20, 1988. He/she is
 to return to school on January 22, 1988. The reason(s) for the suspension is/are
 as follows: smoking on school grounds
 (Reason(s))

which violates Rule(s) No. 9a of the Student Conduct Code

While suspended, Nathaniel Jackson is not to be on school premises (grounds) during
 normal school hours nor is he/she to attend any school sponsored activity.

Please follow the instructions as checked below:

☐ Please accompany _____ to school on _____ at _____ a.m.
 for re-admittance and a conference in _____ office.
 (Principal)

☐ Due to the serious nature of his/her actions, a Board of Education hearing may be scheduled. You will be
 notified of the time and date should a hearing be scheduled.

☐ It is not necessary for you to accompany him/her to school.

You may appeal this decision to the President of the Board of Education or his designee. You may be accompanied by
 a representative of your choice and may request that the hearing be held in executive session. If you intend to appeal
 please address a written request for a hearing within five (5) school days from the date of this notification to:

Office of School and Community Relations
 Youngstown City School District
 P.O. Box 550
 Youngstown, Ohio 44501

VISITING TEACHER'S REPORT OF HEARINGDATE 5/18/86NAME Nathaniel JacksonADDRESS [REDACTED]SCHOOL StambaughGRADE 7DATE OF BIRTH [REDACTED]PARENTS: MOTHER Pauline KornegayFATHER HEARING REQUESTED BY StambaughPLACE Board AnnexREFEREE Charles BurrelliINTERESTED PERSONS PRESENT Nathaniel and MotherREASON FOR HEARING Truancy

INFORMATION AND DEVELOPMENTS Nathaniel has been absent 86 days from Adams
and 7 from Stambaugh

DISPOSITION Charles Burrelli will refer Nathaniel to Joanne Hoxworth.

OO-24

A. Pomponio

Visiting Teacher

NATHANIEL JACKSON														
COURSE CODE	COURSE DESCRIPTION	INSTRUCTOR	1-MARK 2-CONDUCT 3-ABSENT			SEMESTER		1-MARK 2-CONDUCT 3-ABSENT			FINAL			
			1	2	3	1	2	3	1	2	3	1	2	3	EXAM MARK
SAO	ENGLISH	HEGEL	F		F			A		B			D	D*
SBO	READING	HEGEL	F		F			A		A			D	C
SLO	SOCIAL STUDIES	HEGEL	F		F			A		B			B	C
SFO	MATH	HEGEL	F		F			A		A			A	C
SBO	SCIENCE	HEGEL	F		F			B		B			A	C
SIO	AD. PE	DAVIS	D		F			C		C			D	-
SKO	ART	BARRON						A		A			F	D
SLU	MUSIC	CASSELL						A		A			A	A

CURRENT YEAR		CUMULATIVE	
CREDITS EARNED	GRADE POINT AVERAGE	CREDITS ATTEMPTED	GRADE POINT AVERAGE

MARKING CODE		CONDUCT CODE	
A - EXCELLENT		S - SATISFACTORY	
B - GOOD		U - UNSATISFACTORY	
C - AVERAGE		I - IMPROVING	
D - POOR			
F - FAILING			
W - WITHHELD			
P - PASSING			
S - SATISFACTORY			
U - UNSATISFACTORY			
WF - WITHDRAWN FAILING			

ATTENDANCE DATA							
REPORT PERIOD		1		2		3	
ABSENT	TARDY	ABSENT	TARDY	ABSENT	TARDY	ABSENT	TARDY
25	0	31	0	21	0	7	2

REPORT TO PARENT	
THIS IS A REPORT OF YOUR CHILD'S ACHIEVEMENT IN RELATION TO STANDARDS FOR THE COURSES TAKEN. IF AT ANY TIME YOU HAVE QUESTIONS CONCERNING HIS PROGRESS, YOU ARE URGED TO ARRANGE FOR A CONFERENCE WITH HIS TEACHER AND/OR THE PRINCIPAL. THIS REPORT MUST BE SIGNED BY THE PARENT OR GUARDIAN AND RETURNED TO THE PUPILS HOME ROOM TEACHER.	
PARENT'S OR GUARDIAN'S SIGNATURE _____	

Copies:
CIMS
Parent

SE-8

PERIODIC/ANNUAL REVIEW

AND

DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Name of Student Nathanial Jackson Birthdate [REDACTED]
School HAVES JR. HIGH Special Program MH(DH/SRH)
Date Sent 10-31-86

Dear Parent(s): Mrs. Kornegay

As stated to you at the time of your child's placement in our special program, a periodic review of your child's Individualized Education Program (IEP) would be made at least once a year.

This letter is to inform you that a periodic review of your child's Individualized Education Program is scheduled for:

Date: Nov. 13, 1986 Time: 8:00 Place: Rm. 120
Participants will include: Mrs. Kornegay Miss Revetti,
Mr. Terlesky

The purpose of this conference is to review your child's current IEP, and, if necessary, to develop a new one.

We hope you will be able to attend the review conference and participate in the discussions. Your participation in the review process will be helpful in planning the most effective program for your child. Your cooperation with the school staff is very much appreciated. If you have questions, or need additional information, contact:

Miss Sara Revetti at 744-7602 744-7603 744-76
(name and title) MH(DH/SRH) (phone)
Teacher Sincerely,

Miss Sara Revetti
(name and title) MH(DH/SRH)
Teacher

PLEASE VERIFY YOUR RESPONSE BELOW AND SEND THIS REPLY
BACK TO THE SCHOOL CONTACT PERSON AS SOON AS POSSIBLE

Pupil's Name _____

☐ I can attend the Conference at the time given.

☐ I cannot attend the Conference at the appointed time, but would be able to come at the following times: _____

☐ I hereby waive my right to participate in my child's periodic/annual review and development of my child's new Individualized Education Program.

(signature of parent/guardian) (date)

9/86

PROGRESS REPORT

PLEASE RETURN TO THE ATTENDANCE
OFFICE WHEN COMPLETED.A hearing has been set at the I.E.P. CONFERENCEfor NATHANIEL JACKSON

Please give a concise

report concerning Wed. 11-11-87 attendance, grades, conduct, and

cooperation. Return this report by _____ to the attendance office.

	1st.	2nd.	3rd.	4th.	Total
Absence	7				
Tardiness	0				

	1st.	2nd.	3rd.	4th.
Grade to Date	D			

Conduct *little - continually disruptive during period, excessive swearing
- talking out when in language directed toward staff*

Cooperation - *uncooperative, doesn't follow directions
Must be removed from class several times a week*

Work Habits - *refused to do assigned work, completed only
tasks he wanted to.*

Other Comments - *days absent were due to suspension
physical & death threats directed toward staff
fights with other students
disrespect toward staff*

*Resorts to physical violence when doesn't get
own way. (has been physically aggressive
and verbally abusive toward staff)*

Should not be present at this

Dear, Teacher
 Please Excuse Nathaniel Jackson. I suddenly thought
 he had went to the Hospital with his Mom. &
 his Mom took sick so I went with me to the hospital.
 My blood pressure was up very high so I needed
 him at home with me. Come Home and find to
 Thank You for Back To the Home.
 Mrs. Pauline Korman



mahoning county alcoholism services

4214 market street, youngstown, ohio 44512

(216) 782-1188

another service of the alcoholic clinic of youngstown

December 17, 1986

Mr. Saul
Hayes Jr. High School
1616 Ford
Youngstown, Ohio 44504

Re: Nathaniel Jackson

Chemical Dependency Assessment Results

Dear Mr. Saul:

This is to inform you of the impressions gained as a result of the session held with Nathaniel and his parents.

The available data indicated Nathaniel to be harmfully involved with chemicals and at high risk for continued problems.

Nathaniel agreed to sign a 6 month no use contract and he and parents are aware if he violates this contract he will need to be reassessed at Mahoning County Alcoholism Services for further recommendations. It was also recommended that Nathaniel become involved in counseling at Mahoning County Chemical Dependency Program which the parents agreed to pursue at this time.

If there are further questions please contact me at 782-1188.

Sincerely,

Becky Beck, A.C.
Adolescent Coordinator

BB/ar

... be helped and are worth helping.

JACKSON, Nathanie

-2-

EMPLOYABILITY PLANNING:

Factors into consideration, such as performance scores, interests, behavioral observations, physical stamina and all other pertinent evaluative data, the following areas of training and employability are suggested for planning:

1. Nathaniel has indicated a low level of involvement, excessive absenteeism and no significant strengths in his performance. Marginal consideration should be taken for placement within the Auto Reconditioning Training

Immediate supportive services suggested:

Program only.

- Remediation in basic academic skills
- Remediation in social skills
- X Vocational counseling
- X Other ancillary services: Nathaniel has shown a high level of absenteeism. This should be taken into consideration. His reliability and dependability

II. RATIONALE FOR SUGGESTIONS:

were low.

Nathaniel has indicated difficulties attending. He was often observed in his home environment without making a significant effort to obtain transportation and to arrive at the assessment center. He has shown a low level of motivation and no significant involvement in work tasks.

He has indicated a preference for auto body, small engines, auto mechanics and auto reconditioning. Those were the expressions he has indicated in a questionnaire. A subsequent completion of the Career Maturity Inventory has shown deficiencies in career maturity. His low level of involvement and willingness to participate to reduce his chances for completing numerous assignments successfully.

Nathaniel has indicated a minimal functionality in verbal and numerical skills. He was not able to measure, and he could not quantify environmental conditions readily. He has no knowledge of basic concepts in reference to linear and volume measurements. He has shown a moderate ability to follow instructions, and he could manipulate with larger hand tools and equipment successfully.

His absenteeism prevented him from participating successfully in various work samples. He has completed two work samples successfully under time and quality criteria. His performance would be considered limited in general, because of absenteeism and because of his low level of involvement. He was able to manipulate sufficiently in elemental work tasks with a clear three dimensional structure.

He has shown no significant negative behavioral manifestations. He has indicated a tendency to verbalize excessively and to want to engage other members into conversation. This required specific attention. He was cooperative in general, and he interacted appropriately with coworkers and supervision. Please see additional behavioral comments under EMPLOYABILITY ATTITUDES on page 4.

NOTICE OF (INTENT TO SUSPEND)

Name: Nathaniel Jackson Date: 5/29/87

This notice is to tell you that you may be suspended from school.

The reason(s) you may be suspended is/are: Rule I. Disruption of School, (Fighting)

To be suspended from school means that while you are suspended you are not permitted to come to school nor attend any extra curricular activities.

You will have the opportunity to meet with me at an informal hearing to ask questions, explain to me your side of what happened, or question my reasons for giving consideration to suspending you.

Anthony DePina, Jr.
Principal

Assistant Principal

Copy received by student: Nathaniel Jackson
Student's NameCopy refused by student: _____
Witness

Ed 200

While suspended, Nathaniel Jackson is not to be on school premises (grounds) during normal school hours nor is he/she to attend any school sponsored activity.

Please follow the instructions as checked below:

____ Please accompany _____ to school on _____ at _____ a.
for re-admittance and a conference in _____ office. p.
(Principal)

____ Due to the serious nature of his/her actions, a Board of Education hearing may be scheduled. You will be notified of the time and date should a hearing be scheduled.

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You may appeal this decision to the President of the Board of Education or his designee. You may be accompanied by a representative of your choice and may request that the hearing be held in executive session. If you intend to appeal, please address a written request for a hearing within five (5) school days from the date of this notification to:

Office of School and Community Relations
Youngstown City School District
P.O. Box 550
Youngstown, Ohio 44501

cc: Treasurer

NOTICE OF (INTENT TO SUSPEND)

Name: Nathaniel Jackson Date: 2/1/15 ✓

This notice is to tell you that you may be suspended from school.

The reason(s) you may be suspended is/are: Rule 8. Refusal to obey
Refuses to
School Rules. Follow direction of teacher. Disrespectful

To be suspended from school means that while you are suspended you are not permitted to come to school nor attend any extra curricular activities.

You will have the opportunity to meet with me at an informal hearing to ask questions, explain to me your side of what happened, or question my reasons for giving consideration to suspending you.

Anthony DeMuro Jr.
Principal

Assistant Principal

received by student: X Nathaniel Jackson
Student's Name

used by student: _____
Witness

Ed 200

While suspended, Nathaniel Jackson
normal school hours nor is he/she to attend any school sponsored activity.

Please follow the instructions as checked below:

Please accompany _____ to school on _____ at _____ a.
 for re-admittance and a conference in _____ (Principal) office. p.

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Office of School and Community Relations
 Youngstown City School District
 P.O. Box 550
 Youngstown, Ohio 44501

cc: Treasurer

Nathaniel hasn't completed his assignments
in most areas.

He plays quite a bit with small toys and
doesn't follow directions.

He is being retained this year.

6th grade

Retained in 6th grade
Mrs. Heri - Room 300
A. Palaganis

Stanford Achievement

THE PUBLIC SCHOOLS YOUNGSTOWN, OHIO
PUPIL'S ANNUAL SHEET

ED 159

Grades 4, 5, & 6

BORN MO. DAY YEAR ENTRY DATE YEAR MONTH AGE AT SEPT. 1 SEX (LAST NAME) (FIRST NAME) (MIDDLE NAME)

ADDRESS PARENT OCCUPATION TELEPHONE

SCHOOL SCH. YR. GRADE ROOM TEACHER

	REPORT PERIODS				PROGRESS IN ACHIEVEMENT	REPORT PERIODS				
	1	2	3	4		SUBJECT	1	2	3	4
1. HEALTH HABITS Sit, stand and walk correctly					Reading	D ⁵	D ⁵	D ⁵	F ⁵	D
Be more careful of appearance					English	D	D	C	D	D
Practice safety					Spelling	B	B	C	D	C
					Writing	F	F	F	F	F
2. WORK HABITS Use greater effort										
Follow directions					Social Science	F	D	F	F	F
Carelessness					Science	C	D	D	F	L
Complete the work					Arithmetic	D	F	F	F	F
3. CITIZENSHIP HABITS Be Courteous					Health	B	C	C	D	C
Respect authority					Art	D	D	D	D	D
Respect rights of others					Music	U	U	U	U	U
Respect all property					Physical Education	D	D	D	D	D
4. CONDUCT					Reading 2.9	Stanine 2				
					Math 3.1	" 1				

ATTENDANCE

KEY: E-ENTERED W-WITHDRAWN ✓-ABSENT A.M. ONLY X-ABSENT WHOLE DAY O-TARDY (NO. MINUTES) -NOT IN SESSION EX-EXCLUDED

REPORT PERIODS BEGINS	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	DAYS PRESENT	DAYS ABSENT	TIMES TARDY	DAYS IN SESSION	CAUSE OF ABSENCE
1																					46 1/2	1 1/2	0	47	
2																					44	0	2	44	
3																					36 1/2	2 1/2	1	39	
4																					35	9	0	44	

PERMANENT RECORD - PERSONAL
(Follow Manual of Procedure)

1. NAME: JACKSON NATHANIEL EDWIN Sex: F ☒ M ☐
Last First Middle
ADDRESS: [REDACTED]
Fenell
TELEPHONE: [REDACTED]
Fenell Charles
Parents or Guardian Pauline
Address _____
(If different from above)

2. KINDERGARTEN AND PRIMARY

SCHOOL	ENTRY DATE	GR.	YR.	MO.	TEACHER	ABS.	TARDY	NEXT YEAR
Brownell	9/77	K	5	7	Thompson	10	1	1

ACADEMIC PROGRESS: Fairly good progress. Needs more writing readiness for 1st grade.

SCHOOL	ENTRY DATE	GR.	YR.	MO.	TEACHER	ABS.	TARDY	NEXT YEAR
Roswell	9/78	1	6	7	Stouley	10	0	P2

ACADEMIC PROGRESS: Good to fair. Behavior problem. Completed Level 8. Completed BK1 math.

SCHOOL	ENTRY DATE	GR.	YR.	MO.	TEACHER	ABS.	TARDY	NEXT YEAR
Cotzwell	9/79	2	7	7	Zolman	9	0	P3

ACADEMIC PROGRESS: Good progress - but still a beh. prob. Completed 2nd - but not better - in Musland Lead Surgery.

SCHOOL	ENTRY DATE	GR.	YR.	MO.	TEACHER	ABS.	TARDY	NEXT YEAR
Roswell	9/80	3	8	8	Wilson	34 1/2	1	4

ACADEMIC PROGRESS: Unsatisfactory - Level 12 Unit 3 - Poor work habits.

SCHOOL	ENTRY DATE	GR.	YR.	MO.	TEACHER	ABS.	TARDY	NEXT YEAR

ACADEMIC PROGRESS: _____

ED 103

3. INTERMEDIATE - 4-5-6

SCHOOL	Thompson	Brownell	Roswell	Roswell
DATE OF ENTRY	9-81	9-82	9-83	9-84
AGE	9-7	10-6	11-6	12-6
GRADE	4	5	6	6
TEACHER	Thompson	Thompson	TAL	Heri
ABSENT	14 1/2	21	10	18 1/2
TARDY	2	3	3	15
NEXT YEAR	5	6	6	7
READING	D	D	D	D
ENGLISH	C	C	C	D
SPELLING	B	C	C	D
WRITING	D	C	F	D
SOCIAL SCIENCE	D	D	F	F
SCIENCE	C	D	F	D
ARITHMETIC	D	D	F	F
ART	D	S	S	D
MUSIC	D	S	S	F
PHYS. ED.	D	S	S	F
Health		C	C	C

UNGRADED INTERMEDIATE - 4-5-6

Academic Progress: Grade Fair progress in reading. Unsatisfactory progress in math.
Academic Progress: _____

Academic Progress: _____

Academic Progress: _____

Validation BC

4. TRANSFER AND WITHDRAWAL - Elementary

DATE	GRADE	FROM WHERE	TO WHERE	DATE REC'D	COMMENT
6/83			L		
6/85	6	Roswell	Adams		
6/86	7	Adams	Transferred		
		Transferred	4/85	11/21/84	

STUDENT NAME		STUDENT NUMBER	SCHOOL YEAR	GRADE	SCHOOL	HOME ROOM
JACKSON NATE		0016-77-20	1985-90	11	STAMBAUGH	107

COURSE CODE	COURSE DESCRIPTION	INSTRUCTOR	1-MARK			2-CONDUCT			3-ABSENT			SEMESTER	1-MARK			2-CONDUCT			3-ABSENT			FINAL
			1	2	3	1	2	3	1	2	3		1	2	3	1	2	3	EXAM MARK			
0	SBH HEALTH	SUZETTE GREGORY	A	S	1	F	S	17					C	S	9	D	S	9	F	D		
13	SBH AD P.E. II	SUZETTE GREGORY	B	S	1	F	S	17					B	S	9	D	S	9	C	D		
F3	SBH GEN MATH II	SUZETTE GREGORY	C	S	1	F	S	17					D	S	9	C	S	9	F	D		
S83	SBH READING II	SUZETTE GREGORY	B	S	1	F	S	17					D	S	9	C	S	9	F	D		
SC3	SBH WORLD HIST	SUZETTE GREGORY	C	S	1	F	S	17					D	S	9	D	S	9	A	D		
EA3	SBH ENGLISH II	SUZETTE GREGORY	C	S	1	F	S	17					D	S	9	D	S	9	B	D		
ST1	SBH CONS ED	SUZETTE GREGORY				F	S	17					C	S	9	F	S	9	F	F		
LSK4	SBH ART HANDWK	SUZETTE GREGORY				F	S	17					C	S	9	B	S	9	F	C		
SG3	SBH BIOLOGY	SUZETTE GREGORY				F	S	17					D	S	9	D	S	9	B	D		

CURRENT YEAR		CUMULATIVE	
CREDITS EARNED	GRADE POINT AVERAGE	CREDITS ATTEMPTED	GRADE POINT AVERAGE
6-25		13.50	12.50

ATTENDANCE DATA	
REPORT PERIOD	ABSENT TARDY
1-0	17-0

REPORT TO PARENTS	
THIS IS A REPORT OF YOUR CHILD'S ACHIEVEMENT IN RELATION TO STANDARDS FOR THE COURSES TAKEN. IF AT ANY TIME YOU HAVE QUESTIONS CONCERNING HIS PROGRESS, YOU ARE URGED TO ARRANGE FOR A CONFERENCE WITH HIS TEACHER AND/OR THE PRINCIPAL. THIS REPORT MUST BE SIGNED BY THE PARENT OR GUARDIAN AND RETURNED TO THE PUPILS HOME ROOM TEACHER.	
PARENT'S OR GUARDIAN'S SIGNATURE _____	

STUDENT NAME		STUDENT NUMBER	SCHOOL YEAR	GRADE	SCHOOL	HOME ROOM
JACKSON NATE		0016-77-20	1985-90	11	STAMBAUGH	107

COURSE CODE	COURSE DESCRIPTION	INSTRUCTOR	1-MARK			2-CONDUCT			3-ABSENT			SEMESTER	1-MARK			2-CONDUCT			3-ABSENT			FINAL
			1	2	3	1	2	3	1	2	3		1	2	3	EXAM MARK						
SA4	ENGLISH III	GREGORY SUZETTE	A	S		C	S	5					F	S	20	F	S	44	F	F		
SB4	READING III	GREGORY SUZETTE	C	S		C	S	5					F	S	20	F	S	44	F	F		
SC5	U.S. HIST	GREGORY SUZETTE	C	S		C	S	5					F	S	20	F	S	44	F	F		
SF4	CON MATH I	GREGORY SUZETTE	C	S		D	S	5					F	S	20	F	S	44	F	F		
SG4	ECOLGY	GREGORY SUZETTE	C	S		D	S	5					F	S	20	F	S	44	F	F		
SI4	AD P.E. III	GREGORY SUZETTE	W	S		D	S	5					F	S	20	F	S	44	F	F		

CURRENT YEAR		CUMULATIVE	
CREDITS EARNED	GRADE POINT AVERAGE	CREDITS ATTEMPTED	GRADE POINT AVERAGE
		19.75	12.50

ATTENDANCE DATA	
REPORT PERIOD	ABSENT TARDY
	5-0

REPORT TO PARENTS	
THIS IS A REPORT OF YOUR CHILD'S ACHIEVEMENT IN RELATION TO STANDARDS FOR THE COURSES TAKEN. IF AT ANY TIME YOU HAVE QUESTIONS CONCERNING HIS/HER PROGRESS, YOU ARE URGED TO ARRANGE FOR A CONFERENCE WITH THE TEACHER AND/OR THE PRINCIPAL. THIS REPORT MUST BE SIGNED BY THE PARENT OR GUARDIAN AND RETURNED TO THE PUPILS HOME ROOM TEACHER.	
PARENT'S OR GUARDIAN'S SIGNATURE _____	

Nathaniel has made slow progress in reading and unsatisfactory progress in math. His attention span is short and he likes to play.

Writing - Unsatisfactory

Spelling - Good

Behavior - Needs to improve.

Conferences - None.

Reading - Completed Unit 5 - Level 13

Next year - Grade 5 - Room 302
June 11, 1982
D. Martin

OHIO SURVEY TESTS		OHIO SURVEY TESTS		ACADEMIC ABILITY TEST			ACHIEVEMENT TESTS		
STUDENT NAME: JACKSON	NATHANIEL	GRADE: 4A	RAW SCORE	19	18	37	19	17	13
				VERBAL	MATH	TOTAL	READING	ENG.	MATH
ADM.				20	26	21	5	14	5
DATE: 6/21			% ILE STA 9	3	4	3	2	3	2

THE PUBLIC SCHOOLS YOUNGSTOWN, OHIO

PUPIL'S ANNUAL SHEET

ED 159

Grades 4, 5, & 6.

BORN	MO.	DAY	YEAR	ENTRY DATE	YEAR MONTH AGE AT SEPT. 1	SEX	(LAST NAME)	(FIRST NAME)	(MIDDLE NAME)
				9-81	9-7	m	Jackson	Nathaniel	Ed
ADDRESS				PARENT		OCCUPATION		TELEPHONE	
				Charles Pauline					

SCHOOL	SCH. YR.	GRADE	ROOM	TEACHER
Russell	1981-82	4	206	P. Martin

	REPORT PERIODS				SUBJECT	REPORT PERIODS			
	1	2	3	4		1	2	3	4
1. HEALTH HABITS Sit, stand and walk correctly					Reading	D	D	C	C
Be more careful of appearance					English	C	C	D	B
Practice safety					Spelling	B	B	B	B
2. WORK HABITS Use greater effort					Writing	D	D	D	D
Follow directions					Health	C	C	C	C
Carelessness					Social Science	C	F	D	D
Complete the work					Science	D	C	C	D
3. CITIZENSHIP HABITS Be Courteous					Arithmetic	D	D	F	D
Respect authority					Art	D	D	D	D
Respect rights of others					Music	D	D	D	D
Respect all property					Physical Education	D	D	D	D
4. CONDUCT	D D C C								

ATTENDANCE

KEY: E-ENTERED W-WITHDRAWN. /-ABSENT A.M. ONLY O-TARDY (NO. MINUTES) =-NOT IN SESSION EX-EXCLUDED

REPORT PERIODS BEGINS	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	DAYS PRESENT	DAYS ABSENT	TIMES TARDY	DAYS IN SESSION	CAUSE OF ABSENCE
1 9-9					E																47	0	1	47	
81																									
2 11-16																					41	3	0	44	
81																									
3 2-1																					40 1/2	2 1/2	1	43	
82																									
4 1-12																					35	9	0	44	

T NAME: N. JacksonTEACHER: Killa

BUILDING: _____

EDUCATIONAL PLAC: _____

TIME	SITUATION LOCATION	OBSERVED BEHAVIOR	YOUR REACTION	STUDENT RESPONSE
8:05	Reading in room 104 P.P.F.	Nathaniel had fallen asleep during reading - 10 min.	(1) Called student by name to wake up. (2) Student sitting next to him tapped him on the leg to wake up. (3) I walked over to Nate and shook him by the shoulders.	(1) No response from when his name was called. (2) No response from when he kept sleeping.
8:30	Reading in room 104 P.P.F.	Nathaniel earned a 100% on his spelling test.	(4) I put my arm around him and sat him straight in his chair. (5) He woke up and continued in his work.	(3) No response for Nate, he kept sleeping. (4) He woke up and continued in his work.
			Place him a reading award for his good work, praised him. Thank, he gets up.	(5) He was very happy and proud.

SITUATION LOCATION	OBSERVED BEHAVIOR	YOUR REACTION	STUDENT RESPONSE	ESTIMATE INCIDENT
7/1/19 science class	Minimizing my class instructing to class move and not being my seat a content while I provided and papers.	Told him to stop and go back to seat.	He finally went back to seat. Few minutes later walked out.	5 min
9	Walking, touching everything near his seat.	Said nothing	He walked out	2 min
19	Came in, proceeded to shake hands with Skelton kept in class.	Tried to stop & sit down.	Refused. Mr. Melkely came to remove from class	4 min
9	Had missed 35 days this grade level - Had not taken 1 test or quiz in science. Admin. - back in school	Told to stop	Refused - no I ignored him as it was quiet enough as I could teach.	45 min
1	Shouted a girl's name coming into class.	Presented her phone "telling him stop"	He came in to get away told me to stop, and he came in, sat & did no work.	2 min 45 min

88-89

YOUNGSTOWN PUBLIC SCHOOLS
DEPARTMENT OF PUPIL PERSONNEL SERVICES

FOR PROFESSIONAL USE ONLY

NOT FOR RELEASE

SPECIAL EDUCATION VOCATIONAL PLACEMENT MEETING

STUDENT'S NAME: Nathaniel Jackson DATE: 6/16/88
 HOME SCHOOL: Rayen
 SPECIAL SERVICE PROGRAM: SBH
 PSYCHO-EDUCATIONAL ASSESSMENTS COMPLETED/RESULTS: 1/17/86 - IQ 73 -
Woodcock-Johnson Reading 4.6, Math 4.3.
Strengths in auditory, short-term memory, visual
details, oral math problems.
 LEVEL OF READING/MATH: 6/88 Reading 7.8, Spelling 6.9,
Math 6.9. Measurement - 1 1/2.
 VOCATIONAL ASSESSMENT RECOMMENDATIONS: 6/88 - Special Needs Program,
Vocational counseling, personal counseling, behavior
monitoring.
 PREVIOUS MAINSTREAMING EXPERIENCE: None

COMMITTEE RECOMMENDATIONS (Priority order): Auto Reconditioning
with reservations (marginal) Math/Reading
Support as needed. Monitor behavior.

COMMENTS: Responds to individual attention, praise,
conferences, feedback. Needs glasses. Seat
near front of room.

PARENTS: Robert Jackson
 CHOFFIN REP: Ann K. Ellis

STUDENT: Nathaniel Jackson
 TEACHER: Carol M. Mee

HOME SCHOOL COUNSELOR: P. Dubay

PROGRAM COORD.: [Signature] VOL ASSEST.
Marginal placement for
Auto Rec.

SP. ED. VOC. COORD.: D. Salandis

THREE VISITS

- 1.
2. N/A
- 3.

CHOICE

AM

1. Auto Reconditioning
2. Auto Body

Original: CIMS File
 White: Special/Voc. Education Coordinator
 Yellow: Special Ed. Program Coordinator
 Pink: Vocational Supervisor
 Goldenrod: Special Needs

YOUNGSTOWN PUBLIC SCHOOLS

Form
orm

DEPARTMENT OF PUPIL PERSONNEL SERVICES

REQUEST FOR RETURN TO REGULAR CLASS OR TRANSFER OF PROGRAM

Pupil's Name Nathaniel Jackson Student # [REDACTED] Birthdate [REDACTED]Address [REDACTED] Home School AdamsDate of Request 10-13-86 Service to Begin Date 10-17-86

The following person(s):

<u>William Esterly</u>	<u>SRH Coordinator</u>
Name	Title

	Name	Title
--	------	-------

Request(s) that the above named student be changed from the:

<u>MH</u>	<u>STAMBOUGH</u>	<u>8</u>
Name of Program	Name of School	Grade

<u>MH</u>	to	<u>Homes</u>	<u>8</u>
Name of Program		Name of School	Grade

<u>D.H.</u>	<u>V.J.</u>	<u>Orthopedic</u>	<u>H.I.</u>	<u>S.B.H.</u>
<input type="checkbox"/> Vineland	<input type="checkbox"/> Acuity	<input type="checkbox"/> Orthopedic Report	<input type="checkbox"/> Audiogram	<input type="checkbox"/> Medical
<input type="checkbox"/> I.E.P.	<input type="checkbox"/> Medical	<input type="checkbox"/> I.E.P.	<input type="checkbox"/> Medical	<input type="checkbox"/> Anecdotal Records
	<input type="checkbox"/> I.E.P.		<input type="checkbox"/> I.E.P.	<input type="checkbox"/> Devereux
	<input type="checkbox"/> I.E.P.		<input type="checkbox"/> I.E.P.	<input type="checkbox"/> I.E.P.
	<u>Other Medical</u>	<u>L.D.</u>	<u>S.C.D.</u>	
	<input type="checkbox"/> Medical Rpt.	<input type="checkbox"/> Devereux	<input type="checkbox"/> Medical	
	<input type="checkbox"/> I.E.P.	<input type="checkbox"/> I.E.P.	<input type="checkbox"/> Devereux	
			<input type="checkbox"/> I.E.P.	

Reason(s) for the request: Student has shown behavior that isappropriate for placement in the MH Unit at HomesAdams[Signature][Signature]

Signature of Parent

[Signature]

Signature of Principal

[Signature]

Signature of Spec. Ser. Teacher

[Signature]

Signature of Sending Coordinator

[Signature]

Signature of Receiving Coordinator

[Signature]

Request approved

Date 10/29/86

Denied

[Signature]

Signature of Director of Pupil Personnel Services

PRINCIPAL WILL FILE THIS REQUEST IN THE CIMS FOLDER AFTER ALL

Student's Name Nathaniel Jackson Date of Birth 2-13-72 School Stambaugh
 Special Service Program Multi-Handicapped Related Service Work Study School Year 1989-90

Annual Goals:	Short Term Instructional Objectives:	Evaluation Procedures & Criteria:
Nate will complete his job training hours as part of the Try-out Program and be retained as part of the employees regular employees.	Nate will exhibit appropriate retention and execution of learned job tasks thru-out his training. Nate will evidence appropriate school attendance and work attendance. Nate will exhibit appropriate behaviors related to employability: Time management, good communication and sociability, appropriate attitude with co-workers and customers, cooperation, responsibility ability to accept constructive criticism.	Periodic written/oral work evaluations from t employer will be shared with teacher, parent, principal and program coord.
Date: <u>February 9, 1990</u> Chair: <u>James Norbert</u> Coordinator: <u>Colleen Kestel</u> Student: <u>Nathaniel Jackson</u>	Nate will maintain appropriate academic attitude and competence and school cooperation thru-out his job training.	
* Nate will follow ALL THE RULES AND PROCEDURES AT THE WORKPLACE FOR BEHAVIOR, CALLING OFF AND SIGNING IN.		

CRITERIA & SCHEDULES FOR PERIODIC (ANNUAL) REVIEW:

- Date: Feb 13, 1990
- a. Are Instructional Objectives being achieved? Yes ☐ No ☒ Nate refuses to attend school and has not shown up for class since he was able to return after an injury. He did not call off or show up on 3/30/90 or 4/3/90. He is being terminated from AEA campus during because of unreliability.
1. Met as stated: Yes ☐ No ☒ terminated from AEA campus during because of unreliability.
2. Made progress: Yes ☐ No ☒ terminated from AEA campus during because of unreliability.
- b. Is the current placement appropriate? Yes ☐ No ☒ Data Base School Attendance/Work Attendance
- c. Review Schedule: Annual ☐ Semi-Annual ☐ Other (Specify) As needed. Nate refuses to attend school.
- d. Recommendations for placement and general program for next school year: Work would be recommended only if Nate was on a regular basis. Right now he refuses to attend school.
- James Norbert Conference Chairperson
Colleen Kestel Teacher
Work Study Coordinator
- White—Program Coordinator; Canary—CIMS; Pink—Parent; Goldenrod—CIMS

Jackson, Nathaniel [REDACTED] 9 9/01/87 Hayes

[REDACTED]
Youngstown, Ohio 44506

[REDACTED]
Charles, Pauline

1987-88 - 9

1988-89 - 10

9/2/88 Transition

1/13/90

While gone, Nate left the room saying
that he was leaving the building (9:15).
When I returned, Nate was still out
of the room. I went for Mr. Coscareo.
Nate returned. While I was in the hall
Nate walked out of the classroom again
and Mr. Coscareo called him at which
time he went to time out.

J. Semberlin

9-19-77

Nate came into Class on Monday Sep. 19 and took his seat with his backpack. A word search activity was on the desks of the students to earn points. Nate started burning his paper. Mrs. Howell told him to stop. He stopped momentarily - then got up to burn another student's (Lottia) paper. Again he was asked to stop. He did. In his seat, Nate was constantly talking but not swearing. He also laid on the table and refused to leave to go to time out.

Nate was not permitted to leave between periods but Nate got out of the room and went to bother another teacher, Miss Quinn. When he returned he continued speaking but not swearing. I asked Nate to go to time out. He refused. I went to the back of the room by the door and asked Nate to come with me. Nate refused again. I went to Nate and put my hand on Nate to guide him to time out. Nate jumped up and swung his hand to me missing my face by approximately 3 inches. I went for help.

FILED
COURT OF APPEALS

IN THE COURT OF COMMON PLEAS APR 19 1993

TRUMBULL COUNTY, OHIO TRUMBULL COUNTY, OHIO
MARGARET B. O'BRIEN, Clerk

State of Ohio,

) Case No. 91-CR-288

) Court of Appeals #

-vs-

) Judge John M. Stuard

Roderick Davie,

) JURY TRIAL TRANSCRIPT

Defendant

) VOIR DIRE - VOLUME I

Jury Trial Commencing on Tuesday, February 18, 1992
Before the Honorable John M. Stuard at the Trumbull
County Court of Common Pleas, Courtroom Number 2.

APPEARANCES:

ON BEHALF OF THE STATE OF OHIO:

Mr. Dennis Watkins, Prosecuting Attorney

Mr. Thomas Gysegem, Assistant Prosecuting Attorney

Mr. Patrick McCarthy, Assistant Prosecuting Attorney

ON BEHALF OF THE DEFENDANT, RODERICK DAVIE:

Mr. James Lewis, Public Defender

Mr. Paul Choppa, Public Defender

OFFICIAL COURT REPORTER: Lori J. Hiland, RPR

FORM 12-13 PENGADINDY 1-800-531-6889

FILED
APR 15 1996
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

EXHIBIT

688

1 in order to maintain the highest degree of integrity in
2 our system. Shortly, we will proceed with the examination.
3 That will be done by the Court and the attorneys with you
4 individually.

5 Now, we do not ask for the impossible, but we do
6 ask for your understanding and cooperation to make the system
7 work. We are all involved in this system, not just the
8 Judge and the lawyers up here, but you folks. You are members
9 of our society. You are residents of Trumbull County, and
10 you are part of the system. A very essential part. Now,
11 ladies and gentlemen, I ask each of you to please stand
12 up at this time and raise your right hand so that the bailiff
13 may administer the oath in preparation for the examination
14 of the attorneys. If there is anyone who has an objection
15 to being sworn in, just remain standing for an oath of
16 affirmation.

17 (Oath given to all prospective jurors.)

18 THE COURT: Thank you very much.

19 UNIDENTIFIED PROSPECTIVE JUROR: Excuse
20 me, maybe I'm out of order. I can't understand -- I can
21 be out of line. I can't understand why we have the people --
22 how come he is the only black guy here?

23 THE COURT: Let me explain it this way.
24 The prospective jurors are called from a voters wheel. A
25 voters wheel is charged with names from a voters list. Now,

1 that is perfectly or strictly a random selection. To answer
2 your question, all I can say is that jury selection is accord-
3 ing to statute. It's by names as drawn. Sometimes we have
4 different ethnic groups in large abundance. According to
5 the question of the draw, that is something that these two
6 gentlemen up here are charged with the responsibility of
7 seeing that there has been a fair jury selection. I think
8 that's about all that I can say on that.

9 If you're inferring that there is a reason
10 for that --

11 UNIDENTIFIED PROSPECTIVE JUROR: Your
12 Honor, I'm not inferring anything.

13 THE COURT: That's up to counsel to inquire.

14 UNIDENTIFIED PROSPECTIVE JUROR: It's
15 kind of strange that you have 50,000 people in the City
16 of Warren and there's only one black man here.

17 THE COURT: Gentlemen, approach the bench,
18 please.

19 (Conference held at the bench.)

20 THE COURT: Ladies and gentlemen, as
21 we go through each of you individually, any questions that
22 you have of whatever nature, you will have an opportunity
23 to ask at that time. Okay. Although all of you have been
24 called as prospective jurors, only 12 of you may serve as
25 trial jurors in this case, together with a number of

1 alternates. Bearing in mind what I have told you, I will
2 now list the questions that the Court will ask each of you
3 generally and individually when you are questioned by your-
4 self. You need not answer now, but will have an opportunity
5 when you are questioned individually. I just wish you to
6 know what some of the questions will be. Do you hold any
7 personal convictions concerning the death penalty which
8 would preclude your returning a verdict creating the possibility
9 of a death penalty if the facts and the law in the case
10 should warrant? Do you hold any personal convictions which
11 would prevent you from recommending the death penalty as
12 a punishment in this case if the facts and the law in this
13 case should warrant? Do you know the Defendant or any member
14 of his family or his attorneys? Do you know counsel for
15 the State or any member of the staff of the prosecuting
16 attorney? Do you know the victims of the crime charged;
17 John Coleman, Tracey Jefferys, William J. Everett, or any
18 members of their families? Do you, of your own personal
19 knowledge, know anything about this case? Have you heard
20 or read anything about this case from any source? As a
21 result of what you have heard or read, have you formed an
22 opinion with respect to the guilt or innocence of the Defendant?
23 If so, will you be able to set aside any opinion you may
24 now have and decide this case based upon the evidence presented
25 to you in Court and the law and instructions given by the

1 Court? If you have heard or read anything about this case,
2 will you be able to set aside any such information or know-
3 ledge and make it formally part of your deliberations if
4 called upon to sit in this case? Would participation in
5 this case as a juror represent a personal hardship of such
6 magnitude that it would interfere with your ability to tent-
7 atively receive the evidence, follow the instructions of
8 law given to you by the Court, and to be fair and impartial
9 on this case, both to the State of Ohio and to the Defendant?

10 Gentlemen, do you have prospective witness lists
11 available in this matter?

12 MR. WATKINS: Yes, Your Honor.

13 THE COURT: We're going to ask both the
14 prosecution and the defense to read a list of those witnesses
15 that they anticipate calling at this time. I would ask
16 you to catalog any of those names with whom you are familiar.
17 That should be brought up when we go through your individual
18 questioning.

19 MR. WATKINS: Do you want me to read
20 them, Your Honor?

21 THE COURT: If you would be so kind.

22 MR. WATKINS: May I approach the bench?

23 THE COURT: Sure.

24 (Conference held at the bench.)

25 THE COURT: Ladies and gentlemen, the

1 names that are going to be read by both sides do not necess-
2 arily mean that each and every one of those witnesses will
3 be called or doesn't mean that it is all inclusive. There
4 may be others that both sides may call. The reason that
5 I ask that this be done is that's another possibility that
6 someone may not be able to be totally impartial if they
7 should find that a witness appears during the trial that
8 they know extremely well. Whether they look favorably or
9 unfavorably on that witness. The purpose is to allow you
10 to have some more knowledge of the persons who may be called
11 in this case. Mr. Watkins.

12 MR. WATKINS: Thank you. Sergeant William
13 Carnahan, Warren Police; Donna J. Smith, Mineral Ridge,
14 Ohio; Charles Sines, Warren Police Department; Dennis
15 Steinbeck, Warren Police Department; Sharon Allen, BCI,
16 Richfield, Ohio, Bureau of Criminal Identification and
17 Investigation. That's out of the Attorney General's office.
18 Sonya Barnes, Warren, Ohio; Carl Miller, Warren, Ohio; Sondra
19 Lough, Warren, Ohio; Lori Moore, Canfield, Ohio; William
20 Everett, Warren, Ohio; Gary Vingle, Warren Police Department;
21 Dale Laux, BCI, Richfield; Patricia Rogers, St. Joseph's
22 Hospital, Warren, Ohio; Duane Thomas, Warren, Ohio; Randy
23 Smith, Warren, Ohio; Kenneth Morelli, Warren, Ohio; Joe
24 Wolfe, Warren, Ohio; Dr. Ted Soboslay, Trumbull County Coroner;
25 Mike Albanese, Warren, Ohio, City Police; Tim Downs, City

1 Police of Warren, Ohio; Nancy Bulger; Rodney Cole; Jeffrey
2 Lynn, BCI, Richfield; Dr. Roberto Ruiz; Dr. H. S. Shin,
3 out of Summit County Coroner's office acting in St. Joseph's
4 Hospital; Dick Turbock, BCI, Richfield; Dr. Robert Alcorn,
5 Beechwood, Ohio; Buster Janin, Warren, Ohio. I believe
6 that's it, Your Honor.

7 THE COURT: Thank you. Mr. Lewis.

8 MR. LEWIS: Ladies and gentlemen, on
9 behalf of the defense, these may be witnesses called in
10 this case: Roderick Davie; Elaine Davie; William Davie;
11 Dr. James Brown from Cleveland; Dr. John Kenny from Cleveland;
12 Sherman Davie; Andre Davie.

13 THE COURT: Okay. Thank you very much.

14 Now, you are all aware that it is your duty as
15 citizens to serve on a jury. It is also your duty to reveal
16 to the Court any reason whatsoever that you cannot serve
17 to all involved. You are all undoubtedly qualified to serve
18 as jurors. You would not be here otherwise. However, there
19 may be something that would interfere with your ability
20 to serve as a juror in this particular case. For that reason,
21 and in order to obtain a fair and impartial jury, questions
22 will be asked of each of you until we have selected 12 of
23 your number and five alternates.

24 Now, you have, through the questionnaires which
25 you returned to the Court, already answered inquires concerning

1 your background as to your family, employment and so on.
2 Additional questions will be asked of you. All of these
3 questions will be of an informal nature. I would ask you
4 to please be frank and honest in your answers. There will be
5 nothing asked with any intention to embarrass or to pry
6 into your personal affairs. You, by now, are aware of what
7 we're trying to do and the purpose of it. I would ask you
8 to keep in mind that if there is any question asked that
9 you do not understand, it's proper for you to call that
10 to my attention, and I will see that the question is reframed
11 or restated.

12 Now, it is our hope to schedule the voir dire so
13 that all of you do not have to spend days sitting in the
14 courthouse waiting to be called. You have each been assigned
15 a number. And again, please remember that number, the panel
16 and the number, and we will obtain that when you leave.
17 You have also been given a phone number to call into the
18 courthouse. I would ask you to be sure and write it down.
19 Take it and keep it. That phone number is your link to
20 this Court for further instructions.

21 Okay. At this time, I'm going to ask those who
22 held their hands up and gave numbers to remain in the court-
23 room. We'll have 15 from panel 1 also remain for the rest
24 of the day. Before we get to that, Mr. Prosecutor or Mr.
25 Lewis, on those numbers that have been written down, if

1 we have panel 1, one through 15 of those stay, how many
2 of those are people that have held their hands up?

3 MR. LEWIS: We believe just one, Your
4 Honor.

5 THE COURT: Just one?

6 MR. CHOPPA: There was one I didn't get
7 the last number. He's on panel 1. I believe he was in
8 the back there, Your Honor.

9 THE COURT: Clear in the back, what is
10 your number?

11 PROSPECTIVE JUROR 32: I'm 32, Your Honor.

12 THE COURT: Panel 1, 32.

13 MR. WATKINS: Yes. We had No. 7 also
14 for vacation.

15 THE COURT: Okay. I am going to ask
16 on panel 1, one through 20, to remain in the courtroom in
17 addition to those other persons who specifically gave their
18 numbers with problems. The rest of you I will ask you to
19 phone that number each evening during the week after 4:30,
20 and you will be given instructions. Please keep in mind
21 that the panel number is as important as your number, you
22 know, whether it's 1 or 2.

23 Finally, this is important. You are instructed,
24 each of you, from this time forward until this case is con-
25 cluded to, at no time during this case, to discuss anything

1 about this case with anyone else, including other potential
2 jurors. And you will allow no one to discuss the case with
3 you. You also will attempt to read nothing or to listen
4 to anything or to do any research concerning any facts about
5 this case. That applies until I finally discharge you from
6 any further responsibilities in this matter. Any questions?
7 I trust that you have an idea why we're here and what we
8 are attempting to do. Ma'am?

9 PROSPECTIVE JUROR 41: Who do I talk
10 to -- do I talk to you about being excused? I have two
11 preschoolers, and I don't have anybody to watch them.

12 THE COURT: Okay. I would ask you to
13 remain. What is your number, please?

14 PROSPECTIVE JUROR 41: Panel 2, 41.

15 THE COURT: Yes, sir?

16 PROSPECTIVE JUROR 55: Can I talk to
17 you, too? Panel 1, 55.

18 THE COURT: Yes, surely. Okay.

19 PROSPECTIVE JUROR 38: I also have a
20 prepaid vacation. No one saw me with my hand before.

21 THE COURT: What is your number?

22 PROSPECTIVE JUROR 38: Thirty-eight, panel
23 1.

24 THE COURT: One, 38. Okay. Ma'am?

25 PROSPECTIVE JUROR 67: I also have a

1 lot of medical --

2 THE COURT: Your number, please? Your
3 number, please?

4 PROSPECTIVE JUROR 67: Panel 1, 67.

5 THE COURT: Okay. We thank you all for
6 coming this morning.

7 MR. WATKINS: Your Honor, may we approach
8 the bench?

9 THE COURT: Yes.

10 (Conference held at the bench.)

11 THE COURT: Okay. Two last points. Ladies,
12 and gentlemen, panel 1, numbers one through 30, rather than
13 one through 20, anyone from No. 1 through 30 on panel No.
14 1, you are requested to remain seated this morning. Everyone
15 else -- oh, part of my instruction to you is that you will
16 not avail yourself of any reports in the newspaper, TV,
17 in addition to discussing this matter. You are to keep
18 your own counsel as you presently are in this courtroom
19 and not absorb any other information about this case until
20 I finally discharge you from that instruction. We thank
21 you very much.

22 (Designated prospective jurors excused.)

23 THE COURT: Ladies and gentlemen, we're
24 going to handle each of you individually, as we will all
25 prospective jurors. So, you are all free to take a break.

1 Wait in the hall. There's a possibility you may be able
2 to sit in the courtroom downstairs, if it's not being used.
3 In any event, I would ask you to leave. Make yourself avail-
4 able in the courthouse, and you will be called individually.
5 We will get through this process as quickly as possible.
6 There's a coffee machine downstairs, some other machines
7 dispensing candy and what have you. Nos. 1 through 7, we
8 would ask you to remain in the courtroom until we begin
9 this process.

10 We have taken Juror No. 22, panel 2, Mr. Arnold
11 A. Fall.

12 Mr. Fall, it is quite noticeable that you have
13 a medical problem. You have an oxygen supply. Would you
14 be able to serve as a juror on this case, or would you find
15 that very difficult?

16 PROSPECTIVE JUROR 22: No, this only
17 lasts four to six hours maximum time.

18 MR. WATKINS: We have no objection.

19 MR. LEWIS: We have no objection either.

20 THE COURT: Thank you for coming.

21 (Prospective Juror Fall excused.)

22 THE COURT: You have appeared in Court
23 with two children.

24 PROSPECTIVE JUROR 41: I would be working
25 if I could go out. I don't have a baby sitter. My parents

1 are old and they can't take care of them.

2 MR. LEWIS: You have no one available
3 to watch the children?

4 PROSPECTIVE JUROR 41: No one at all.

5 THE COURT: Gentlemen, is there an objection?

6 MR. WATKINS: No objection.

7 MR. LEWIS: No objection, Your Honor.

8 THE COURT: You are excused.

9 (Prospective Juror Brenner excused.)

10 MR. LEWIS: Judge, I'd like to, at this
11 time, renew the motion in regard to the motion filed previously
12 in this case in regard to the choosing out of the venire
13 for selection of jurors out of this case. We previously
14 filed a motion in regard to allowing the driver's licenses
15 to be used, and it was denied. The jury commissioners have
16 either chose not to do it, or have not implemented the pro-
17 cedure provided by the statute. Although it's an alternative
18 procedure, it was placed in there for a reason, to get a
19 more adequate cross section of the jury. Today, we have
20 venire that has appeared to counsel that I think there has
21 probably been at least 20 of the venire, some of which who
22 did not show originally today, as well as possibly maybe
23 10 who were previously excused. There is not one black
24 person among the entire venire. We have approximately 130
25 people in the courtroom, and to me, as far as I know, there

1 was not one individual who was a black person in the venire
2 or chosen in this venire. I don't know the exact person
3 percentage of the population. The prosecution has indicated
4 six percent. I'll go along with six percent. But even
5 if six percent is the population of Trumbull County, it
6 would seem to me that you would get at least five or six
7 out of 100. In this case, we have 175. We did not have
8 one black person. It seems to me that normally, under the
9 circumstances, that if you get an accurate cross section
10 you might have nine, 10 or 11 or somewhere in that area.
11 There was not one black person chosen from the venire. We
12 are not questioning the actual method in which it was chosen
13 or anything was incorrectly done, but drawing upon only
14 voters does not adequately represent the cross section of
15 the community. And I think that's the reason, by the statute,
16 for driver's licenses. I think this is evidence of the
17 fact that it does not draw a cross section of the community.
18 Therefore, I renew my motion.

19 THE COURT: Okay. Mr. Watkins.

20 MR. WATKINS: Your Honor, my response
21 is that the Court has already ruled. I would add this.
22 When the Court has ruled, its journal entry reflected the
23 Supreme Court of Ohio as to jury selection in this state
24 that to my knowledge, and I think the demographics can be
25 validated through judicial notice of the census, that there

1 is six percent of the population in Trumbull County are
2 black. That any minority in a county of our size with that
3 percentage in the minority, that is a small minority. There
4 is no possible way that every single case that you're going
5 to get black individuals on the jury. And it's a case-
6 by-case thing. Our system is a system where all citizens
7 are to be considered fair and impartial. And the inference
8 is a sad one. That that means that people who happen to
9 be of another race or origin can't sit, and I don't think
10 that's a fair inference. I would also note that there were
11 at least one that I know, because we did some checking,
12 black that was on the original list as selected by the jury
13 commission. His name is Hugley. However, he was -- they
14 were unable to serve him. This is a problem that we have
15 in the jury process in that you don't necessarily have every-
16 body served.

17 THE COURT: Okay. The Court, in handling
18 the previous motion similar to this, has gone through the
19 statutes. The Court participated in the original selection.
20 The Court witnesses the selection from the jury wheel. Argu-
21 ments can be made on practically everything we do throughout
22 every case. It's my reasoning that the statute, as it is
23 in place in Ohio, has been complied with strictly in the
24 choosing of this jury. And, you know, I have no control
25 over what names come up, nor does anyone. That's the whole

1 purpose for having it the way that it is. The names that
2 go into the jury wheel, you have no control over, nor does
3 anyone, because it is based on the voting list.

4 MR. WATKINS: Your Honor, may I make
5 a further comment? I would also note, even if we were going
6 to take the Jim Lewis method, statistically, there would
7 be cases where even with that method you would not have
8 blacks because the number of blacks in the community. I
9 am talking about the Trumbull County community. There would
10 probably be a few more. I don't even know. But, the point
11 is, it would not change the results necessarily. We still
12 could have and do have juries that would not have blacks.

13 THE COURT: The point is, we are dealing
14 with a total unknow. You can speculate. There is a method
15 as set forth in the legislature. We have strenuously tried
16 to and have followed that method. Your motion will be over-
17 ruled.

18 MR. LEWIS: I just want to add a further
19 note, Judge. That the implementation -- this has been
20 implemented in a number of counties. If the legislation
21 was so absolutely happy in thinking that was just a wonderful
22 thing, then they would have left it alone. Evidently, they
23 derived a reason for promulgating and putting this section
24 in providing for driver's licenses. And actually, the Courts
25 do have control over that, as far as what the jury commissioner

1 system is that they can utilize. I think the reason and
2 the presence there is that there would be no other reason
3 for it. It is there, and trying to give representation
4 to more people in the community. In the event then I assume
5 the Court is overruling the motion, I would object to the
6 venire in its total, and the Defendant's violation of his
7 constitutional rights in the Sixth and Fourteenth Amendments
8 of the Constitution.

9 THE COURT: Thank you.

10 For the record, I have something here from Edward
11 J. Urban which says, "Please be advised the above patient
12 is unable to participate in jury duty due to health problems."
13 Signed by Dr. Urban. Mr. Slusher, would you find it difficult
14 to sit as a juror in this matter due to health problems?

15 PROSPECTIVE JUROR 7: Yes, Your Honor.

16 THE COURT: Do you gentlemen wish to
17 inquire?

18 MR. WATKINS: I have no objection, Your
19 Honor.

20 MR. LEWIS: If I could, Mr. Slusher,
21 I don't mean to pry. Do you have a specific medical problem?

22 PROSPECTIVE JUROR 7: Yes.

23 MR. LEWIS: Okay. You also have any
24 trouble hearing?

25 PROSPECTIVE JUROR 7: No, I'm okay.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Nathaniel Jackson's Appendix to his Memorandum Contra To The Prosecutor's Motion To Dismiss was forwarded by first-class, postage prepaid U.S. Mail to Luwayne Annos, Assistant Prosecuting Attorney, Trumbull County Prosecutor's Office, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481, on this 1ST day of June, 2004.



RANDALL L. PORTER
COUNSEL FOR NATHANIEL JACKSON

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

CASE NO. 01-CR-794

STATE OF OHIO,) JUDGE JOHN M. STUARD
PLAINTIFF)
vs.) JUDGMENT ENTRY
)
NATHANIEL JACKSON,) ENTRY ON SENTENCE
DEFENDANT)

On August 14, 2012, Defendant, Nathaniel Jackson's sentencing hearing was held pursuant to O.R.C. Section 2929.19. Defense Attorneys, Anthony Consoldane and James Lewis, and Prosecutor Dennis Watkins and Assistant Prosecutor Charles Morrow were present, as was Defendant, Nathaniel Jackson, who was afforded all rights pursuant to Criminal Rule 32. The Court has considered the record and oral statements, as well as the principles and purposes of sentencing under O.R.C. Section 2929.11, and has balanced the seriousness and recidivism factors of O.R.C. Section 2929.12.

Pursuant to law, the Trial Court this day, August 14, 2012, having determined in a separate opinion of specific



findings that the aggravating circumstances as to the count of Aggravated Murder outweigh the mitigating factors by proof beyond a reasonable doubt, then made inquiry as to whether the Defendant had anything to say why judgment should not be pronounced against him, and the Defendant in answer showed no good cause or sufficient reason why sentence should not be pronounced.

The Court has considered the factors under O.R.C. Section 2929.14 and makes the following findings:

- 1) The shortest prison term will demean the seriousness of the Defendant's conduct;
- 2) The longest prison term is appropriate because the Defendant committed the worst form of the offense;
- 3) Multiple prison terms are necessary to protect the public from future crime and to punish the offender;
- 4) Consecutive prison sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the offender poses to the public;
- 5) The harm caused by the multiple offenses was so great that no single prison term for any of the

offenses committed as part of a single course of conduct adequately reflects the seriousness of the Defendant's conduct; and

6) The Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Defendant, Nathaniel Jackson, be taken from the courtroom to the Trumbull County Jail and from thence to the Correction Reception Center at Lorain, Ohio, and thereafter be sentenced to death on August 15, 2013, on Count One; and imprisoned therein for the stated prison term of ten (10) years on Count Three; plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed in Count Three; ten (10) years on Count Four, plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed on Count Four; sentence in Count Four to be served consecutively to the sentence imposed on Count Three. Firearm Specifications in Count Three and Count Four shall merge as one sentence in Count Three as a matter of law.

Defendant is Ordered to the cost of prosecution taxed in
the amount of \$_____ for which execution is awarded.

8/14/12

DATE

J. M. Stuard

JUDGE JOHN M. STUARD

THE CLERK OF COURTS IS HEREBY
ORDERED TO SERVE COPIES OF
THIS ENTRY TO ALL COUNSEL OF RECORD.

J. M. Stuard

JUDGE JOHN M. STUARD

You are hereby notified that
you have been convicted of a
felony of violence and pursuant
to Section 2923.13 of the
Ohio Revised Code, you are
prohibited from acquiring,
having, carrying or using any
firearm or dangerous ordnance.

8-15-12
copies to:
Pres.
R. Porter

CLERK OF COURTS

✓

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
CASE NO. 01-CR-794

STATE OF OHIO,)	
)	
Plaintiff)	
)	
vs.	)	<u>FINDINGS OF FACTS</u>
)	
NATHANIEL E. JACKSON,	)	<u>AND CONCLUSIONS OF LAW</u>
)	
Defendant)	

The Defendant, Nathaniel E. Jackson, having entered a plea of not guilty, this matter proceeded to trial, and the Defendant being found guilty was sentenced by this Court.

The matter is before the Court on remand from the Supreme Court of Ohio pursuant to the Court's opinion and order on remand. The remand is quite specific wherein having found no prejudicial error in regard to Defendant, Nathaniel Jackson's conviction, the conviction and judgment of the Court was affirmed. The reviewing Court went on to state the opinion that the administrative act of typing this Court's opinion evaluating the appropriateness of the death penalty as required by R.C. 2929.03(F) was defective. The Supreme Court apparently thought the prosecution participated in the Court's conclusions as set forth in the final opinion.



2001 CR
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This writer has presided over the trials of each of the Co-Defendants, Nathaniel Jackson and Donna Roberts. He has reviewed and decided the appropriateness of the death penalty option in both cases as required by O.R.C. 2929.03 and now does so again as ordered by the Ohio Supreme Court.

On November 8, 2002, a Trumbull County jury returned a verdict finding the Defendant, Nathaniel E. Jackson, guilty of two (2) counts of Aggravated Murder arising from the death of Robert S. Fingerhut. Since Count 1 and Count 2 of the indictment merge for sentencing purposes, the State elected to dismiss Count 2 and proceed to the mitigation phase on the 1st count of the indictment. Therefore, for the purposes of this opinion, the Defendant was convicted, under the 1st count of the indictment, of purposely, and with prior calculation and design, of causing the death of Robert S. Fingerhut. The jury further found that the State had proved beyond a reasonable doubt the specifications of Aggravating Circumstances. After the mitigation hearing, the jury concluded that the State had proved beyond a reasonable doubt that the Aggravating Circumstances outweighed the mitigating factors and returned a verdict recommending that the sentence of death be imposed upon the Defendant.

Factually, the evidence presented by the State revealed that while the Defendant was in prison for a prior conviction unrelated to the present case, he along with the co-defendant, Donna Roberts, plotted the murder of her housemate and ex-husband, Robert S. Fingerhut.

The police authorities in investigating the death of Robert S. Fingerhut found two (2) boxes of personal letters written between Jackson and Roberts, wherein they planned in great detail how the murder of Robert s. Fingerhut would be carried out. The police also found numerous phone call recordings from the institution in which Jackson had been incarcerated wherein specific preparations were discussed.

The State, therefore, had a plethora of information in the handwriting of both Co-Defendants wherein they plotted the murder of Robert's housemate, and ex-husband, Robert S. Fingerhut. Indeed, both of them conceived and executed a plan to kill Fingerhut in order to permit the Defendant, Roberts, to live "happily ever after." However, the plan went awry when Jackson, who was in the house where Fingerhut resided, was shot in the left index finger during the execution of Fingerhut. He then took Fingerhut's car keys and drove the vehicle which Fingerhut typically operated to his business location in to Youngstown. Shortly thereafter, Roberts took the Defendant to

a motel in Boardman and rented a room where Jackson could hide out. Ultimately, the Defendant was captured at a house in Youngstown, and gave a statement to the police alleging self defense.

More specifically, the State introduced evidence that on December 11, 2001, two (2) days after the Defendant was released from prison, Robert S. Fingerhut, while in his home, was pistol whipped and shot 3 times, causing at least four injuries from gunshots. Two of the injuries were to the back, with one grazing the back, and the other entering near the shoulder before exiting out the chest area of the victim. Fingerhut also sustained a defensive gun shot wound to the webbing of his left hand between the thumb and forefinger. The fatal gunshot was to the top of Fingerhut's head and from a short distance. This injury "would have dropped him like a sack of potatoes," as testified to by Dr. Humphrey Germaniuk, the coroner.

Police responded to the crime scene as a result of a 911 call. When they arrived at approximately 12:01 a.m., they were met by the Co-Defendant, Donna Roberts, who informed them that her ex-husband's car was missing. She also granted them permission to search the residence and her car. During this search, police found more than 140 letters from the Defendant

to Roberts in her dresser, and an equal number of letters from Roberts to the Defendant in the trunk of Roberts' car, in a paper bag bearing the Defendant's name and prison number.

Additionally, law enforcement officers were able to obtain 19 telephone conversations, lasting more than three (3) hours, which were recorded while the Defendant was incarcerated in Lorain Correctional Institution. These telephone conversations, along with the letters which spanned three (3) months, revealed a continuing and evolving plan to kill Fingerhut immediately upon the Defendant's release from prison.¹

The evidence also revealed that Roberts, near the time of the murder, was seen driving her automobile in a very slow manner away from the vicinity of the home where Fingerhut lived. Furthermore, within two (2) hours from the last time Fingerhut was seen alive, Roberts rented a hotel room for the Defendant. In this room, bloody bandages and other medical supplies were found by hotel cleaning people and were subsequently collected by police.

The car which was usually driven by Fingerhut, and which had been reported stolen by the Co-Defendant, was recovered in Youngstown, Ohio. Bloodstains were located throughout the vehicle and were collected by law enforcement. DNA analysis revealed that the blood matched that of DNA profile of the

Defendant.

The State also introduced evidence that Roberts and the Defendant discussed purchasing a "new Lincoln" or "2002 Cadillac DeVille" for the Defendant. Additionally, Fingerhut had two (2) life insurance policies with a total death benefit of \$550,000.00 and with Donna Roberts named as the beneficiary.

Based upon this and other evidence, the jury properly concluded that the Defendant committed a burglary to facilitate the premeditated and the purposeful murder of the victim Fingerhut along with the Co-Defendant Roberts. The Defendant after executing his plan, then stole Fingerhut's vehicle which allowed the jury to find that the murder was committed while committing the aggravating circumstances of Aggravated Burglary and Aggravated Robbery.

In a case of this nature, pursuant to O.R.C. 2929.03(D)(3), the Court is required to determine whether the State has proved beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors. Indeed the Supreme Court of Ohio has stated in State v. Wogenstahl (1996), 75 Ohio St. 3d, 344:

The nature and circumstances of the offense may only enter into the statutory weighing process on the side of mitigation...In the penalty phase of a capital trial, the 'aggravating circumstances' against which the mitigating evidence is to be weighed are limited to the specifications of aggravating circumstances set forth in

RC 2929.04(A)(1) through (8) that have been alleged in the indictment and proved beyond a reasonable doubt. (See Wogenstahl at 356)

In performing its statutory duty, a review of the aggravating circumstances is required.

1.) The Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Burglary and that he was the principal offender.

The evidence presented at trial reflected that the Defendant trespassed in the victim's dwelling and murdered him. The Court finds that the Defendant entered into 254 Fonderlac Drive in Howland Township. He was wearing gloves and armed with a gun, with which he struck the victim leaving a mark on Fingerhut's face. Once in the house, he fired the gun three times causing four (4) separate wounds. The fatal shot was to the top of Fingerhut's head, and nearly straight down.

From the aforementioned evidence, the Jury concluded that the Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Burglary and that he was the principal offender.

2.) The Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Robbery and

that he was the principal offender.

As he was driving away from the crime scene, and prior to abandoning the vehicle in Youngstown, he left blood evidence throughout the car. This evidence was subjected to DNA testing, which confirmed that forensically, it was his blood. Quite simply, the Defendant committed the Aggravated Robbery to escape the consequences of his prior murderous act.

This evidence permitting the jury to conclude that the Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Robbery and that he was the principal offender.

To be weighed against the aggravating circumstances are the mitigating factors. In this case, the following factors were considered by the Court as possible mitigation against each specification and against the imposition of the death penalty:

- 1.) *The nature and circumstances of the offense, the history, character, and background of the offender.*

As was noted in Wogenstahl, supra, the nature and circumstances of the offense may only enter into the statutory weighing process on the side of mitigation. However, in this

case, reviewing the nature and circumstances, the Court does not find any credible evidence which would allow the Court to accord any weight to the nature and circumstances of the offense against the imposition of the death penalty.

In considering the history, character and background of the offender, this Court considered the home life of the Defendant and the fact that he grew up in a relatively poor environment, and that he was cared for and raised by his mother and maternal grandmother. His biological father had little, if any, real involvement with him, and this lack of a father figure likely contributed to his behavioral problems.

Though the Court gives some weight to the Defendant's upbringing, it deserves little weight because of the credible testimony from the Defendant's step-father, his sister, his mother, and Dr. McPherson. These witnesses testified that the Defendant was respectful to both his mother and grandmother. His sister, who described him as smart and really kind, noted that they attended church. Further, there was testimony offered that he was reared in an environment, where he was not physically or sexually abused. His mother also declined to say that his home was in a "rough neighborhood," or that the Defendant had any problems in school. Dr. McPherson's report noted that the Defendant had not been hospitalized for any

physical or mental condition. The witnesses also notes that they practiced moral tenets and that responsibility and respect were taught.

In conclusion, from the testimony of these witnesses, there is nothing particularly evident to show an unusual childhood or to offer an explanation for the Defendant's behavior which would be entitled any significant weight on the side of mitigation.

2.) Whether the victim of the offense induced or facilitated the killing.

Although under R.C. 2929.04(B)(1), the mitigating factor regarding whether the victim of the offense induced or facilitated it, was not specifically argued by the Defendant during the penalty phase of the trial as mitigating, the Court did consider the Defendant's videotaped statement presented in evidence during the trial phase. In the self-serving statement, the Defendant claimed that the killing of the victim was as a result of the Defendant protecting himself from an unprovoked attack by the victim.

This statement to the police attempted to construct a scenario wherein the victim approached the Defendant to purchase marijuana and then invited the Defendant into his home. The Defendant then claims that the victim then pulled a

gun on him. The Defendant asserted that he attempted to disarm the victim, but the gun went off apparently striking the victim. However, the other facts illustrating the planning and execution of the murder, along with the physical evidence introduced, causes the Defendant's version not to be credible. As such, the Court does not accord any weight to this mitigating factor.

3.) *Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.*

Again, while the Defendant did not specifically argue this mitigating factor, the Court upon reviewing the video tape, noticed that the Defendant claimed that the victim made derogatory statements about the Defendant's race which angered the Defendant. However, this comment is likewise not convincing for the same reasons noted previously. This mitigating factor has no weight.

4.) *Any other factors that are relevant to the issue of whether the offender should be sentenced to death.*

Under R.C. 2929.04(B)(7), commonly referred to as the "catch all provision," the Court reviewed the Defendant's capacity to appreciate the criminality of his conduct in light

of the defense expert testimony regarding his mental history and mental state at the time of the offense was considered as a possible factor under R.C. 2929.04(B)(3).

This testimony revealed that the Defendant suffered from Attention Deficit Disorder/Hyperactivity Disorder, Chemical Dependency, and a reported history of alcohol abuse. Further, the evidence disclosed that the Defendant had an Antisocial Personality Disorder and was considered low average or better in intelligence.

Significantly, however, there was no evidence presented that the Defendant, at the time of the offense, had any mental disease or defect or that he lacked the capacity to appreciate the criminality of his conduct. His Antisocial Personality Disorder only showed that he had a history of inappropriate and impulsive behavior from his early childhood to the present. He was incarcerated four (4) times. According to the Defendant's own expert, the Defendant, throughout his juvenile and adult life had received repeated treatment and/or probation for his criminal transgressions and his drug and alcohol abuse. He did not learn from his past mistakes, but only escalated his antisocial conduct.

In summary, this Court gives very little weight in mitigation to the Defendant's mental status, and his drug and

alcohol abuse history especially in light of the Defendant's elaborate scheme to kill the victim, elude capture, and finally his attempt to deceive police officers with a statement blaming the victim.

Further under R.C. 2929.04(B)(7), the Court examined the Defendant's ability to maintain himself in a stable fashion in a structured setting. Indeed, it was suggested by the Defense that he could be a productive member of the general prison population, and that this should be considered as mitigating. However, the Court gives slight weight to this particular factor.

The Defendant's last incarceration was the result of him not learning from his past mistakes, and from his tendency to act out impulsively without looking at the consequences. Furthermore, he repeatedly was placed on probation, but he continued to digress, committing more serious criminal acts. Indeed, during the last incarceration, the Defendant claimed to have "found God" and that he was going to straighten out his life. At the same time, it is abundantly clear that he was plotting to commit the ultimate criminal act, a premeditated burglary and murder, while pre-textually presenting himself to prison officials as a good candidate for a release program. Quite simply, in the very setting in which the Defense suggests

that he could be a productive member, the Defendant defined and refined a plot, involving gloves, a mask and handcuffs, to murder Robert S. Fingerhut so that in effect he could assume Fingerhut's lifestyle, including running the Greyhound bus business, managing rental properties, and living in his home with Fingerhut's ex-wife.

The Defendant also offered an unsworn statement, wherein he stated that he was "very sorry for what happened." The Court likewise gives this statement slight weight as the statement lacked sincerity. The tone and tenor of the apology did not, in the Court's opinion, come from someone who was genuinely remorseful. Even assuming that the Defendant was remorseful, such retrospective remorse is not entitled to any significant weight. To the contrary, the Court believes that the Defendant's feigned remorse stems from the fact that the Defendant was apprehended. The Defendant was disappointed that the fool-proof, premeditated murder plot, which he developed over nearly three (3) months, and which included shooting the victim "in the 'F'ing head," failed.

When independently weighing the aggravating circumstances as to the Aggravated Murder as previously outlined against the collective factors in mitigation, this Court finds that the aggravating circumstances not only outweigh the mitigating

factors by proof beyond a reasonable doubt, but in fact, they almost completely overshadow them.

The State of Ohio has recognized that under certain circumstances, the death penalty is an appropriate sanction for any Defendant who commits an Aggravated Murder during the commission of certain felonies. In the case at bar, the underlying felonies are Aggravated Burglary and Aggravated Robbery.

In this particular case, the Court accords substantial weight to the Aggravated Burglary specification. In order to prove an Aggravated Burglary, the State is required to demonstrate that the Defendant trespassed in the occupied structure for the purpose of committing a criminal act. In most instances, this criminal act is a theft offense. Occasionally, a Defendant will trespass to commit a kidnapping or even a rape. Such criminal acts provide the basis upon which a Defendant can be convicted of Aggravated Burglary. Then, if during any of these underlying criminal acts, the victim is purposely killed, an Aggravated Murder with the specification of Aggravated Burglary has been committed. These alone can permit the imposition of the death penalty should the aggravating circumstance of the Aggravated Burglary be found to outweigh the mitigating factors.

Under the facts in the instant case, this Court cannot foresee of any other form of Aggravated Burglary where the weight to be given to this aggravating circumstance could ever be greater. The evidence reveals that the sole purpose for the Defendant's illegal entry in the Fingerhut residence was not to commit a theft, a kidnapping or a rape, but rather to carry out the premeditated, cold blooded execution of Robert S. Fingerhut. This is the most heinous form of Aggravated Burglary, and it is entitled to unsurpassed weight. Further, in this Court's view, this aggravating circumstance, standing alone, outweighs all of the evidence presented in mitigation.

The Court further gives weight to the Aggravated Robbery specification. After shooting the victim in the head, the Defendant took personal property of the victim to effectuate his escape. Indeed, the Defendant stole the victim's keys and his car.

Against this backdrop, the mitigating factors of the Defendant's background, history and character, his Antisocial Personality Disorder, his Attention Deficit Disorder, his history of drug and alcohol abuse, as well as his unsworn statement, have very little effect in minimizing, lessening, or excusing the degree of the Defendant's murderous conduct. From the overwhelming evidence, it is this Court's opinion that the

Defendant and the Co-Defendant plotted the murder of Robert S. Fingerhut solely to collect \$550,000.00 in insurance proceeds. This was accomplished by trespassing in the residence where Fingerhut resided, for the sole purpose of ambushing and murdering him.

Upon consideration of the relevant evidence raised at trial, the relevant testimony, the other evidence, the unsworn statement of the Defendant, and the arguments of counsel, it is the judgement of this Court that the aggravating circumstances, outweigh, by proof beyond a reasonable doubt, the collective mitigating factors.

8/14/12

DATE

John M. Stuard

JUDGE JOHN M. STUARD
COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

✓
TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH
WITH BY ORDINARY MAIL.

John M. Stuard
JUDGE

8-15-12

copies to:

Pro.

R. Porter

CLERK OF COURTS

WARRANT TO CONVEY

TO THE TRUMBULL COUNTY JAIL
Revised Code, Sections 2949.12 TO 2949.17

COURT OF COMMON PLEAS, TRUMBULL COUNTY, WARREN, OHIO

2001 CR 00794
12541 1801

STATE OF OHIO

VS.

NATHANIEL E JACKSON

TO THE SHERIFF OF SAID COUNTY:

WHEREAS, OUR SAID COURT, BEGUN AND HELD AT WARREN, OHIO IN
SAID COUNTY, THE SAID INMATE,

NATHANIEL E JACKSON

TO BE BROUGHT/TAKEN BACK TO THE TRUMBULL COUNTY JAIL.

TRUMBULL CORRECTIONAL INSTITUTION

YOU ARE THEREFORE HEREBY COMMANDED, TO TAKE CHARGE OF AND
CONVEY THE SAID NATHANIEL E JACKSON TO THE TRUMBULL COUNTY JAIL
AT WARREN, OHIO AND MAKE DUE RETURN OF YOUR PROCEEDING HEREIN TO
THIS OFFICE FORTHWITH.

IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND
AFFIXED THE SEAL OF SAID COURT AT
TRUMBULL COUNTY, WARREN, OHIO
August 13, 2012

KAREN INFANTE ALLEN,
Clerk of Courts

By: KIMBERLY REEVES, Deputy Clerk

RECEIVED
SHERIFF'S OFFICE
2012 AUG 13 P 1:53
THOMAS L. ALTIERE
SHERIFF
TRUMBULL COUNTY

2001 CR
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2001 CR 00794

RETURN

TRUMBULL COUNTY
COMMON PLEAS COURT
Trumbull County, Warren, Ohio

STATE OF OHIO

VS.

NATHANIEL E JACKSON

WARRANT TO CONVEYRETURNED AND FILED

_____, 201__

KAREN INFANTE ALLEN,
Clerk of Courts

By: _____
DEPUTY CLERK

RECEIVED THIS WRIT ON THE 13 DAY
OF August, 2012, AT 1:53
O'CLOCK P.M., AND ON THE 14
DAY OF August, 2012,
I EXECUTED THE SAME BY CONVEYING
THE PERSON NAMED TO THE PLACE
DESIGNATED AS SHOWN BY THE
RECEIPT ENDORSED HEREON.

Thomas L. Altieri
SHERIFF

By: Dep. Daniel M. Polansky
DEPUTY

FEES

Mileage:	\$ <u>11.00</u>
Service:	\$ <u>10.00</u>
Other:	\$ _____
_____	\$ _____
TOTAL:	\$ <u>21.00</u>

_____, OHIO

_____, 201__

KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
2012 AUG 15 PM 2 21
TRUMBULL COUNTY
CLERK OF COURTS

RECEIVED THIS DAY FROM _____

SHERIFF OF _____
COUNTY, OHIO, THE PRISONER NAMED
IN THE WITHIN WARRANT.

D. Belser
Superintendent

believed to be several errors and omissions, in addition to those notice by the secretary. These include the omission in the caption of the phrase "DEATH PENALTY CASE," of the notification of post release control for Aggravated Burglary and Aggravated Robbery, the "life time parole" for the Aggravated Murder conviction, and the "good time" provisions.

After reviewing the same, counsel immediately contacted a member of the judge's staff and advised that there appeared to be errors in the unsigned entry and that the same copy should be sent to the appropriate defense attorneys. The undersigned also noted that this office would be filing this instant motion requesting that the entry be corrected. Counsel learned that the original, signed and time-stamped sentencing entry had been filed with the clerk's office on August 14, 2012, a copy of which undersigned counsel obtained from the clerks' office and was being prepared to be sent to counsel.

The State now requests that this Court issue an entry correcting the *Entry On Sentence* dated August 14, 2012 to accurately reflect the Court's oral pronouncements, including adding the phrase "DEATH PENALTY CASE" in the caption, correcting the names of the attorneys present at the proceeding, the post release control notification, the life time parole notification and the "good time" notification. Indeed at the sentencing hearing on August 14, 2012, the Court did orally advise the Defendant of his lifetime parole obligations, his post release control requirements and the "good time" provisions. As the Defendant was properly notified of these, the State respectfully requests that the *Entry on Sentence* be corrected to accurately reflect the sentence imposed.

WHEREFORE the State respectfully requests that the Court issue an entry correcting the *Entry on Sentencing*

Respectfully Submitted,

DENNIS WATKINS (#009949)
TRUMBULL COUNTY
PROSECUTING ATTORNEY BY:



CHARLES L. MORROW (#0040575)
Assistant Prosecuting Attorney
Trumbull County Prosecutor's Office
160 High St. NW, 4th Floor
Warren, Ohio, 44481
Telephone No.: (330) 675-2426
Fax No.: (330) 675-2431

COUNSEL FOR THE PLAINTIFF,
THE STATE OF OHIO

PROOF OF SERVICE

I do hereby certify that on this 15th day of August, 2012, a copy of the foregoing pleading by was sent by regular U.S. Mail to:

Atty. John P. Parker(#0041243)
988 E. 185th Street
Cleveland, Ohio 44119

and Atty. Randall Porter (#0005835)
Office of the Ohio Public Defender
250 E. Broad St., Suite 1400
Columbus, Ohio, 43215

And by facsimile to
614-644-0708



CHARLES L. MORROW (#0040575)
Assistant Prosecuting Attorney

08/15/2012 09:18 3306753078

TRUMBULL CO COURT

PAGE 01/04

1

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

CASE NO. 01-CR-794

STATE OF OHIO,	)	JUDGE JOHN M. STUARD
PLAINTIFF)	
vs.	)	<u>JUDGMENT ENTRY</u>
)	
NATHANIEL JACKSON,	)	<u>ENTRY ON SENTENCE</u>
DEFENDANT)	

On August 14, 2012, Defendant, Nathaniel Jackson's sentencing hearing was held pursuant to O.R.C. Section 2929.19. Defense Attorneys, Anthony Consoldane and James Lewis, and Prosecutor Dennis Watkins and Assistant Prosecutor Charles Morrow were present, as was Defendant, Nathaniel Jackson, who was afforded all rights pursuant to Criminal Rule 32. The Court has considered the record and oral statements, as well as the principles and purposes of sentencing under O.R.C. Section 2929.11, and has balanced the seriousness and recidivism factors of O.R.C. Section 2929.12.

Pursuant to law, the Trial Court this day, August 14, 2012, having determined in a separate opinion of specific

08/15/2012 09:18 3306753078

TRUMBULL CO COURT

PAGE 02/04

2

findings that the aggravating circumstances as to the count of Aggravated Murder outweigh the mitigating factors by proof beyond a reasonable doubt, then made inquiry as to whether the Defendant had anything to say why judgment should not be pronounced against him, and the Defendant in answer showed no good cause or sufficient reason why sentence should not be pronounced.

The Court has considered the factors under O.R.C. Section 2929.14 and makes the following findings:

- 1) The shortest prison term will demean the seriousness of the Defendant's conduct;
- 2) The longest prison term is appropriate because the Defendant committed the worst form of the offense;
- 3) Multiple prison terms are necessary to protect the public from future crime and to punish the offender;
- 4) Consecutive prison sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the offender poses to the public;
- 5) The harm caused by the multiple offenses was so great that no single prison term for any of the

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TRUMBULL CO COURT

PAGE 03/04

3

offenses committed as part of a single course of conduct adequately reflects the seriousness of the Defendant's conduct; and

6) The Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Defendant, Nathaniel Jackson, be taken from the courtroom to the Trumbull County Jail and from thence to the Correction Reception Center at Lorain, Ohio, and thereafter be sentenced to death on August 15, 2013, on Count One; and imprisoned therein for the stated prison term of ten (10) years on Count Three; plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed in Count Three; ten (10) years on Count Four, plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed on Count Four; sentence in Count Four to be served consecutively to the sentence imposed on Count Three. Firearm Specifications in Count Three and Count Four shall merge as one sentence in Count Three as a matter of law.

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TRUMBULL CO COURT

PAGE 04/04

4

Defendant is Ordered to the cost of prosecution taxed in
the amount of \$_____ for which execution is awarded.

DATE

JUDGE JOHN M. STUARD

THE CLERK OF COURTS IS HEREBY
ORDERED TO SERVE COPIES OF
THIS ENTRY TO ALL COUNSEL OF RECORD.

JUDGE JOHN M. STUARD

You are hereby notified that
you have been convicted of a
felony of violence and pursuant
to Section 2923.13 of the
Ohio Revised Code, you are
prohibited from acquiring,
having, carrying or using any
firearm or dangerous ordnance.

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

CASE NO. 01-CR-794

STATE OF OHIO,	)	JUDGE JOHN M. STUARD
PLAINTIFF)	
vs.	)	<u>JUDGMENT ENTRY</u>
)	
NATHANIEL JACKSON,	)	<u>ENTRY ON SENTENCE</u>
DEFENDANT)	

On August 14, 2012, Defendant, Nathaniel Jackson's sentencing hearing was held pursuant to O.R.C. Section 2929.19. Defense Attorneys, Anthony Consoldane and James Lewis, and Prosecutor Dennis Watkins and Assistant Prosecutor Charles Morrow were present, as was Defendant, Nathaniel Jackson, who was afforded all rights pursuant to Criminal Rule 32. The Court has considered the record and oral statements, as well as the principles and purposes of sentencing under O.R.C. Section 2929.11, and has balanced the seriousness and recidivism factors of O.R.C. Section 2929.12.

Pursuant to law, the Trial Court this day, August 14, 2012, having determined in a separate opinion of specific

findings that the aggravating circumstances as to the count of Aggravated Murder outweigh the mitigating factors by proof beyond a reasonable doubt, then made inquiry as to whether the Defendant had anything to say why judgment should not be pronounced against him, and the Defendant in answer showed no good cause or sufficient reason why sentence should not be pronounced.

The Court has considered the factors under O.R.C. Section 2929.14 and makes the following findings:

- 1) The shortest prison term will demean the seriousness of the Defendant's conduct;
- 2) The longest prison term is appropriate because the Defendant committed the worst form of the offense;
- 3) Multiple prison terms are necessary to protect the public from future crime and to punish the offender;
- 4) Consecutive prison sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the offender poses to the public;
- 5) The harm caused by the multiple offenses was so great that no single prison term for any of the

offenses committed as part of a single course of conduct adequately reflects the seriousness of the Defendant's conduct; and

6) The Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Defendant, Nathaniel Jackson, be taken from the courtroom to the Trumbull County Jail and from thence to the Correction Reception Center at Lorain, Ohio, and thereafter be sentenced to death on August 15, 2013, on Count One; and imprisoned therein for the stated prison term of ten (10) years on Count Three; plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed in Count Three; ten (10) years on Count Four, plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed on Count Four; sentence in Count Four to be served consecutively to the sentence imposed on Count Three. Firearm Specifications in Count Three and Count Four shall merge as one sentence in Count Three as a matter of law.

Defendant is Ordered to the cost of prosecution taxed in
the amount of \$_____ for which execution is awarded.

8/14/12

DATE

John M. Stuard

JUDGE JOHN M. STUARD

THE CLERK OF COURTS IS HEREBY
ORDERED TO SERVE COPIES OF
THIS ENTRY TO ALL COUNSEL OF RECORD.

John M. Stuard
JUDGE JOHN M. STUARD

You are hereby notified that
you have been convicted of a
felony of violence and pursuant
to Section 2923.13 of the
Ohio Revised Code, you are
prohibited from acquiring,
having, carrying or using any
firearm or dangerous ordnance.

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IN THE COURT OF COMMON PLEAS
-GENERAL DIVISION-
TRUMBULL COUNTY, OHIO

CASE NUMBER: 2001 CR 00794

STATE OF OHIO
PLAINTIFF

vs.

JUDGE JOHN M STUARD

NATHANIEL E JACKSON
DEFENDANT

JUDGMENT ENTRY

Defendant's Motion to For Voluntary Recusal is denied.

Date: 8/16/12


JUDGE JOHN M STUARD

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH
WITH BY ORDINARY MAIL

JUDGE

✓
8-16-12
Copies to:
Drs.
R. Porter



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2001 CR 00794
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
-GENERAL DIVISION-
TRUMBULL COUNTY, OHIO

CASE NUMBER: 2001 CR 00794

STATE OF OHIO
PLAINTIFF

vs.

JUDGE JOHN M STUARD

NATHANIEL E JACKSON
DEFENDANT

JUDGMENT ENTRY

Defendant's Motion to Dismiss Death Penalty Specifications is denied.

John M Stuard

JUDGE JOHN M STUARD

Date: 8/16/12

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH
WITH BY ORDINARY MAIL.
John M Stuard
JUDGE

8-16-12
Copies to:
Drs.
R. Porter



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IN THE COURT OF COMMON PLEAS
-GENERAL DIVISION-
TRUMBULL COUNTY, OHIO

CASE NUMBER: 2001 CR 00794

STATE OF OHIO
PLAINTIFF

vs.

JUDGE JOHN M STUARD

NATHANIEL E JACKSON
DEFENDANT

JUDGMENT ENTRY

Defendant's Renewed Motion for Continuance is denied.

Date:

8/10/12


JUDGE JOHN M STUARD

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH
WITH BY ORDINARY MAIL.

JUDGE

8/16/12

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Copies to:
Dros.
R. Porter



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**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION-
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2001 CR 00794

**STATE OF OHIO
PLAINTIFF**

VS.

JUDGE JOHN M STUARD

**NATHANIEL E JACKSON
DEFENDANT**

**SENTENCED TO THE LORAIN
CORRECTIONAL FACILITY**

**NUNC PRO TUNC
JUDGMENT ENTRY ON SENTENCE**

A DEATH PENALTY CASE

The Court has prepared this Nunc Pro Tunc Judgment Entry on Sentence for the purpose of correcting the original Entry on Sentence filed in this case on August 14, 2012. On August 15, 2012, Atty. Charles Morrow filed a Motion to Correct Entry on Sentence alerting the Court to the fact that certain clerical errors were present in the August 14, 2012 sentencing entry. The Court has reviewed the motion as well as the August 14, 2012 sentencing entry and finds the entry contained several inadvertent errors. Therefore, the Court renders this Nunc Pro Tunc Judgment Entry on Sentence for the purpose of correcting the August 14, 2012 Entry on Sentence previously prepared by the Court.

On August 14, 2012, Defendant, Nathaniel Jackson, was brought before this Court for the purposes of re-sentencing after the original sentence was vacated by the Eleventh District Court of Appeals on October 18, 2010. On August 14, 2012, the Defendant's sentencing hearing was held pursuant to R.C. 2929.19. The Defendant was



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represented by Atty. Randall L. Porter. Also present in Court was Atty. John P. Parker.¹ Atty. Charles L. Morrow and Atty. LuWayne Annos were present in Court on behalf of the State of Ohio.

The Defendant was afforded all rights pursuant to Crim.R.32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under R.C. 2929.11 and has balanced the seriousness and recidivism factors of R.C. 2929.12.

The Court has previously set forth in a separate opinion of specific factual findings that the aggravating circumstances as to Count One; Aggravated Murder, outweigh the mitigating factors by proof beyond a reasonable doubt. The Court inquired of the Defendant at the hearing in this matter as to whether he had anything to say why judgment should not be pronounced against him. The Defendant, in answer, showed no good cause or sufficient reason why sentence should not be pronounced.

The Court has considered the factors under R.C. 2929.14 and makes the following findings: (1) The shortest prison term will demean the seriousness of the Defendant's conduct; (2) the longest prison term is appropriate because the Defendant committed the worst form of the offense; (3) multiple prison terms are necessary to protect the public from future crime and to punish the offender; (4) consecutive prison sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the offender poses to the public; (5) the harm caused by the multiple offenses was so great that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the Defendant's conduct;

¹ Atty. Parker advised the Court during the sentencing hearing that a conflict existed which prevented him from representing the Defendant for the purposes of this sentencing hearing.

and (6) the Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

It is therefore, ORDERED, ADJUDGED and DECREED that:

1. The Defendant is hereby sentenced to death on August 15, 2013 on Count One;
2. The Defendant serve an prison term of Ten (10) Years on Count Three plus Three (3) Years on the firearm specification;
3. The Three (3) Year imprisonment term on the firearm specification shall be served prior to and consecutive to the imprisonment term for the underlying offense in Count Three for a total imprisonment term of Thirteen (13) Years on Count Three;
4. The Defendant serve a prison term of Ten (10) Years on Count Four plus Three (3) Years on the firearm specification;
5. The Three (3) Year imprisonment term on the firearm specification shall be served prior to and consecutive to the imprisonment term for the underlying offense in Count Four for a total imprisonment term of Thirteen (13) Years on Count Four;
6. The imprisonment term on Count Four shall be served consecutive to the imprisonment term imposed on Count Three;
7. The firearm specifications in Count Three and Count Four shall merge for the purposes of sentencing in Count Three as a matter of law;
8. The Defendant is ordered to submit to DNA testing;
9. The Defendant shall pay the cost of prosecution taxed in the amount of \$_____ costs for which execution is awarded.

As to Counts Three and Four, the Court has further notified the Defendant that post-release control is mandatory in this case for Five (5) Years, as well as the consequences for violating conditions of post-release control imposed by the Parole Board under R.C. 2967.28. The Defendant is ordered to serve as part of this sentence any term of post-release control imposed by the Parole Board, and any prison term for violation of that post-release control.

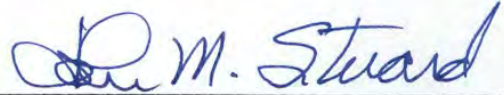
As to Count One, the Court has further notified the Defendant that post-release control is mandatory if the Defendant is released on parole before serving the Death Sentence in Count One. The maximum possible parole period is equal to a Life Sentence imposed for the Aggravated Murder charge in Count One. A violation of any parole rule or condition may result in (1) a more restrictive sanction while released; (2) an increased duration of parole supervision, up to the maximum set out above; and/or (3) re-imprisonment for a period of time equal to the Life Sentence. If the Defendant commits another felony while subject to this period of parole or supervision, or if by some other means violates the conditions of parole, he may be sent back to prison to serve out the remainder of the Life Sentence imposed.

The Defendant is hereby advised that most prison inmates are eligible to earn days of credit against their prison sentences for each completed month of productive participation in educational or employment programs developed by ODRC with specific standards for performance by prisoners. Some inmates, including those confined for sex offenses and the most dangerous first and second degree felonies and homicides are not eligible to earn days of credit.

The Court further disapproves of the Defendant's placement in a program

of shock incarceration pursuant to R.C. 5120.031 or for placement in an intensive prison program pursuant to R.C. 5120.032.

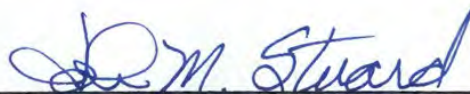
IT IS SO ORDERED.



JUDGE JOHN M STUARD

Date: 8/16/12

**TO THE CLERK OF COURTS: You Are Ordered to Serve
Copies of this Judgment on all Counsel of Record
or Upon the Parties who are Unrepresented Forthwith
by Ordinary Mail.**



JUDGE JOHN M STUARD

8-16-12
Copies to:
PRO.
R. Porter

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,

:

Plaintiff,

: **Case No. 01-CR-794**

-vs-

:

NATHANIEL JACKSON,

: **Judge Stuard**

Defendant.

:

2012 AUG 22 PM 3 12
CLERK OF COURT
TRUMBULL COUNTY, OHIO

**NATHANIEL JACKSON'S NOTICE OF INTENT TO FILE REPLY
TO THE STATE OF OHIO'S AUGUST 15, 2012 MOTION TO
CORRECT ENTRY ON SENTENCE**

On August 15, 2012, the State filed a pleading entitled "State's Motion to Correct Entry on Sentence." Nathaniel Jackson will file a response to that pleading by August 24, 2012. Undersigned counsel, because of prior commitments, will be unable to file a response prior to that date.

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER

Randall Porter (Per authority by Jennifer Prillo 0073744)
RANDALL L. PORTER - 0005835
Assistant State Public Defender
Office of the Ohio Public Defender
250 E. Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394 (Voice)
(614) 644-0708 (Facsimile)



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CRN

Randall.Porter@opd.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Nathaniel Jackson's Notice Of Intent To File Reply To The State Of Ohio's August 15, 2012 Motion To Correct Entry On Sentence* was forwarded electronically and by first-class, postage prepaid U.S. Mail to Charles L. Morrow and Luwayne Annos, Assistant Prosecuting Attorneys, Trumbull County Prosecutor's Office, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481, on this 20th day of August, 2012.


RANDALL L. PORTER
COUNSEL FOR PETITIONER
(per authority by Jennifer Pilla 0073744)

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff,

vs.

NATHANIEL JACKSON,

Defendant.

Common Pleas Case No. 01-CR-794

From the Trumbull County
Court of Common Pleas

Supreme Court Case No. 12-AP-090

Judgment Entry

2011 AUG 31 PM 11
KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
CLERK OF COURTS
TRUMBULL COUNTY
Randall L. Porter, counsel for the defendant, has filed an affidavit with the Clerk of this Court under R.C. 2701.03 seeking to disqualify Judge John M. Stuard from "further presiding over his resentencing proceedings," in case No. 01-CR-794 in the Court of Common Pleas of Trumbull County.

This is the third affidavit of disqualification Porter has filed in this case against Judge Stuard. The previous affidavits were denied. *See In re Disqualification of Stuard*, 113 Ohio St.3d 1236, 2006-Ohio-7233, 863 N.E.2d 636; *In re Disqualification of Stuard* (Aug. 20, 2008), case No. 08-AP-043, unreported. In general, if an affidavit has been properly filed, a trial judge is without authority to proceed with substantive aspects of the case until the Chief Justice rules on the affidavit. *See* R.C. 2701.03(D)(1). However, R.C. 2701.03(D)(4) provides that if, after the denial of an affidavit of disqualification, a "second or subsequent affidavit of disqualification regarding the same judge and the same proceeding is filed . . . by counsel for the same party . . . the judge against whom the second or subsequent affidavit is filed may preside in the proceeding prior to the ruling of the chief justice . . . on the second or subsequent affidavit."

Porter filed his third affidavit on August 7, 2012, with the stated purpose to disqualify Judge Stuard from presiding over the defendant's "resentencing proceedings," which were



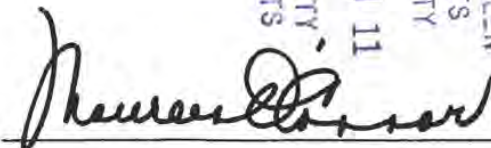
scheduled for August 14, 2012. *See* Porter Aff. at p. 1, ¶¶ 57, 59-60. Because of R.C. 2701.03(D)(4), Judge Stuard was authorized to preside over the matter during the pendency of the affidavit.

On August 16, 2012, Judge Stuard informed the Court he held Jackson's re-sentencing hearing, as scheduled, on August 14. On August 22, 2012, Porter filed a "Notice," which similarly stated Judge Stuard conducted the re-sentencing hearing on August 14.

The Chief Justice's statutory authority to order disqualification of judges extends only to those situations in which "a proceeding [is] pending before the court." R.C. 2701.03(A). Porter's affidavit and his "Notice" indicate he filed the affidavit to disqualify Judge Stuard from presiding over the re-sentencing hearing. Because the re-sentencing hearing has already occurred, and the record does not indicate there is any other matter pending before the judge against whom the affidavit is filed, the affidavit of disqualification against Judge Stuard is dismissed as moot.

Dated this 27th day of August, 2012.

2012 AUG 31 PM 4 11
KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
CLERK OF COURTS



MAUREEN O'CONNOR
Chief Justice

Copies to: Kristina D. Frost, Clerk of the Supreme Court
Hon. John M. Stuard
✓ Trumbull County Clerk of Courts
Randall Porter, Esq.
Luwayne Annos, Esq.

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,

:

Plaintiff,

: **Case No. 01-CR-794**

-vs-

:

NATHANIEL JACKSON,

: **Judge Stuard**

Defendant.

:

KAREN INFANTE-HELEN
CLERK OF COURTS
TRUMBULL COUNTY, OHIO
2012 SEP 4 AM 10:42
TRUMBULL COUNTY
CLERK OF COURTS

**NATHANIEL JACKSON'S MOTION
FOR APPOINTMENT OF APPELLATE COUNSEL**

Nathaniel Jackson moves the Court to appoint appellate counsel on his behalf. He requests that the Court appoint Randall L. Porter and Dennis L. Sipe.

On August 14, 2012, the Court sentenced Nathaniel Jackson to death. The Court indicated that undersigned counsel should move for the appointment of appellate counsel. Nathaniel Jackson requests that the Court appoint Randall L. Porter and Dennis L. Sipe for purposes of his appeal.

Undersigned counsel been certified by the Ohio Supreme Court to act as lead counsel at trial and on appeal in capital cases. He is familiar with the record having represented Jackson for eight years and established a relationship with him.

Mr. Sipe has also been certified by the Ohio Supreme Court to serve as



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lead counsel at trial and on appeal in capital cases. He was previously a member of the Office of the Ohio Attorney General from 1977 to 1987 and for part of that time period served as the chief of the 1983 Section of that office. Since leaving that Office, Mr. Sipe has been counsel of record in countless civil and criminal cases (some which involved complex litigation), including numerous homicide cases some of which involved the death penalty. He has prosecuted or defended more than fifty appeals from the trial court level to the Sixth Circuit. He has or is representing in federal habeas four death sentenced individuals and also represented death sentenced individuals in state post-conviction, applications for reopening, and direct appeal proceedings. Mr. Porter has discussed that matter Mr. Sipe who has indicated that he would be willing to accept the appointment.¹

Wherefore, Nathaniel Jackson requests that the Court grant this motion and order that attorneys Randall L. Porter and Dennis L. Sipe be appointed for purposes of Nathaniel Jackson's direct appeal to the Ohio Supreme Court.

Respectfully submitted,

Office of the
Ohio Public Defender

RANDALL L. PORTER - 0005835
Assistant State Public Defender

250 E. Broad Street - Suite 1400

¹ The contact information for Mr. Sipe is Dennis L. Sipe, Buell & Sipe, Co., L.P.A., 322 Third Street, Marietta, Ohio 45750, Telephone: (740) 373-3219, Facsimile: (740) 373-2892 and Email: dennis@buell.sipecom.

Columbus, Ohio 43215
(614) 466-5394 (Voice)
(614) 644-0708 (Facsimile)
Randall.Porter@opd.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Nathaniel Jackson's Motion for Appointment of Appellate Counsel was forwarded by both electronic and regular U.S. Mail to Charles L. Morrow and Luwayne Annos, Assistant Prosecuting Attorneys, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this 31st day of August, 2012.



RANDALL PORTER - 0005835
Assistant State Public Defender

Counsel For Nathaniel Jackson

IN THE COURT OF COMMON PLEAS
-GENERAL DIVISION-
TRUMBULL COUNTY, OHIO

CASE NUMBER: 2001 CR 00794

STATE OF OHIO
PLAINTIFF

vs.

JUDGE JOHN M STUARD

NATHANIEL E JACKSON
DEFENDANT

JUDGMENT ENTRY

Nathaniel Jackson's Motion for Appointment of Appellate Counsel is granted.
Attorney Randall L. Porter and Attorney Dennis L. Sipe are appointed as Appellate
Counsel in this matter.

Date: 9/6/12


JUDGE JOHN M STUARD

FILED
COURT OF COMMON PLEAS

SEP 12 2012

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH
WITH BY ORDINARY MAIL.


JUDGE

9/12/12
Copies To:
PKCS
Atty J. PARKER
Atty A. CONSOLDANIE
Atty R. PARKER
Atty J. KAPZYKO



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NATHANIEL JACKSON v. WARDEN
CASE NO. 4:07-cv-0880
SUPP. APPENDIX - Page 5837

COA

The Supreme Court of Ohio

To the Clerk of Court of Common Pleas for

Trumbull County

ORDER TO CERTIFY RECORD IN DEATH PENALTY CASE

S.C. Case No. 2012-1644C.P. Case No. 01-CR-794

The State of Ohio v. Nathaniel Jackson

You are hereby ORDERED, pursuant to Rule 19.5 of the Rules of Practice of the Supreme Court of Ohio, to prepare and forward the record in the above-captioned case to the Clerk's Office of the Supreme Court, no later than 90 days from the date of this entry, unless the Supreme Court grants an extension of time under Rule 19.5(C)(1).

FILED
COURT OF APPEALS

Pursuant to Rule 19.4(A) and 19.5(B) the record shall consist of the following:

OCT 03 2012

- The original papers filed in the trial court;
- The transcript of proceedings, and computer diskettes of the transcript, if available;
- A certified copy of the docket and journal entries prepared by the clerk of the trial court; and

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

Pursuant to Rule 19.4(A)(3) the custodian of the record shall only transmit audio exhibits, video exhibits, and documents such as papers, maps, or photographs. Pursuant to 19.4(A)(2) no other physical exhibits shall be transmitted unless directed to do so by the Clerk of the Supreme Court.

You are further ORDERED, pursuant to Rule 19.5(B)(1), to number the documents and exhibits comprising the record; to prepare an index of the documents and exhibits, correspondingly numbered and identified; to briefly describe all exhibits listed in the index; and to send a copy of the index to all counsel of record in the case and transmit the index with the record to the Clerk of the Supreme Court.

You are further ORDERED, pursuant to Rule 19.5(D), to make a copy of the record and retain the copy for use in any postconviction proceeding. Pursuant to this Court's order in *In re: Reimbursement to Trial Court Clerks for Duplication of Death Penalty Records* (January 25, 1999), a trial court clerk shall be permitted reimbursement to the following extent: five cents per page for photocopying the original papers, transcript of proceedings, and documentary exhibits; the actual costs of duplicating photographs, videotapes, and audiotapes that are part of the record. Any request for reimbursement shall be filed simultaneously with the filing of the record, and reimbursement shall be subject to the availability of funds appropriated by the General Assembly.

Nathaniel Jackson

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,
Plaintiff

-vs-

NATHANIEL E. JACKSON,
Defendant

CASE NO. 01-CR-794

JUDGE JOHN M. STUARD

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED, that on Tuesday, August 14,
2012, these proceedings came on to be heard before
one of the Judges of this Court, The Honorable Judge
John M. Stuard, Court Room No. 2, Trumbull County
Court House, Warren, OH.

2012 OCT 12 PM 12:39
TRUMBULL COUNTY
CLERK OF COURTS

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, OH

22

APPEARANCES

On behalf of the State of Ohio:

CHARLES L. MORROW
LuWAYNE ANNOS
Assistant Prosecuting Attorneys
160 High Street
Warren, OH 44481

On behalf of the Defendant:

RANDALL L. PORTER
Assistant State Public Defender
250 E. Broad Street
Columbus, OH 43215

JOHN P. PARKER
Attorney at Law
988 East 185th Street
Cleveland, OH 44119

1 TUESDAY, AUGUST 14, 2012

2 In Open Court at 1:45 p.m. for Re-sentencing
3 Hearing

4 THE COURT: This matter has been set
5 this afternoon for re-sentencing of Nathaniel
6 Jackson. Mr. Jackson now has an appeal pending in
7 the Ohio Supreme Court. The result of that appeal,
8 this matter has been sent back for re-sentencing.

9 A couple of housekeeping matters here. Mr.
10 Jackson filed a complaint for writ of prohibition.
11 The Court has been advised that by the Supreme Court
12 of Ohio by letter, that this Court has jurisdiction
13 and may proceed as I see fit and there has not yet
14 issued an alternative or peremptory writ and there
15 is no order from any higher court requiring that the
16 sentencing today not go forward. So we will,
17 therefore, proceed with that sentencing.

18 MR. PORTER: Just so, if I might,
19 just so the record is clear, the writ of prohibition
20 is in the Court of Appeals. There is an affidavit
21 of bias and prejudice.

22 THE COURT: The Court of Appeals has
23 issued no directive that would speak otherwise than

1 allowing this Court to proceed. Thank you for that.

2 There is also a motion for the Court to
3 voluntarily recuse myself, and I find no reason to
4 do that. That is what the purpose of your attempts
5 through the Supreme Court to have me removed from
6 this. I'll respectfully overrule that motion.

7 There is another issue that's been raised.
8 Another matter that's been raised is that concerning
9 the scope of the re-sentencing hearing with the
10 thrust of the motion being to permit additional
11 information on mitigation. This came up in the
12 Roberts case, and I did not permit that, but I did
13 allow her to submit the evidence that she wanted to
14 put before the Court for the purpose of the
15 re-sentencing. That was all included in the record
16 for purposes of appeal. I did not permit it for
17 purposes of re-sentencing. And let me state why.

18 Mr. Jackson in this case had an opportunity
19 and did present at the trial, mitigating evidence.
20 He had several people testify. I think his sister
21 and his mother testified. And I believe he spoke to
22 the jury. The jury had to take into consideration
23 the evidence presented at trial in order to make its

1 determination. This matter is back on the
2 re-sentencing, and I view the matter that this
3 re-sentencing should be conducted as the original
4 was. To allow mitigating factors to come in, in
5 addition at this point, there is no way that that
6 could be presented to that jury, and I think that it
7 completely befuddles the whole process to allow that
8 and the extent would be another restraint I think on
9 permitting that at this time.

10 So I will follow the action taken in the
11 previous case and deny any broadening of the scope
12 other than what has been available to Mr. Jackson at
13 the time of the trial and of which he took
14 advantage.

15 I think the last motion that's been filed
16 today here is in regard to dismissing the death
17 penalty specification. I believe that counsel for
18 the Defendant has proffered here that some of these
19 arguments have not been ruled on previously by the
20 Courts of Appeals. I reviewed them and they all
21 fall within the realm of many arguments that have
22 presented over the last period of time since we have
23 reconstructed our death penalty cases in Ohio. I

1 think that all, if not all, any that I have
2 recognized here, and they are quite extensive, have
3 been raised in other cases repeatedly, and I find no
4 reason, nothing that advises me that those should be
5 considered for purposes of this hearing. I think
6 those are motions addressing matters that are more
7 well put before the upper Courts on the basis of
8 attacking the whole death penalty scheme in Ohio.

9 I see this hearing in a very narrow light as
10 directed by the Supreme Court. And that is to
11 conduct this re-sentencing based on a review of the
12 evidence that was presented during the trial.

13 You are all aware of the reason why this case
14 is back here. The Supreme Court I think
15 misunderstood what occurred, but they have made
16 their ruling and I must abide by that.

17 Mr. Porter, I believe that addresses all of
18 the things that you have raised today with new
19 motions. One other last thing, if I may, there is a
20 pile of documents here that are attached to the
21 various motions. I have looked through them. I had
22 some extra time here since Defendant was late in
23 arriving. And those appear to me to be repetitive

1 and all inclusive of various documents from this
2 trial, the Court has prior knowledge of, and I have
3 considered them in light of your motions.

4 Now, do you have anything further that I have
5 missed as far as getting these motions straightened
6 around?

7 MR. PORTER: I do. Thank you, Your
8 Honor. I have three quick points. First is, Nate
9 today is technically here without appointed counsel.
10 I'm not appointed for this matter.

11 THE COURT: I did miss that. Let me
12 address that, if I may. We are not here because of
13 pending charges against Mr. Jackson. We are here
14 solely as a result of the appeal that was filed from
15 the original trial. Therefore, it appears to me
16 that you are the appropriate counsel. This Court
17 need not reappoint you. You are merely handling the
18 appeal process for Mr. Jackson. Otherwise we
19 wouldn't be here. I see that you have second
20 counsel. What is your name, sir, for the record?

21 MR. PARKER: John Parker.

22 THE COURT: Mr. Parker, you are also
23 representing him on appeal, is that correct?

1 MR. PARKER: Your Honor, I have been
2 appointed. I was appointed by the Federal District
3 Court to represent Mr. Jackson on his federal habeas
4 petition, which has been pending for a number of
5 years now. I have only been appointed to represent
6 him on that federal petition. Judge Gwinn of the
7 U.S. District Court --

8 THE COURT: Very fine jurist.

9 MR. PARKER: Yes he is. He's
10 handling the matter. And I along with Mr. Doyle out
11 of Cleveland represent Mr. Jackson in that federal
12 habeas. That habeas petition was stayed at our
13 request so we could return to state court and
14 attempt to exhaust some issues that are before the
15 Court now. I have never been appointed in state
16 court to represent Mr. Jackson. In fact, we may
17 have a different viewpoint on the re-sentencing
18 hearing that we have here today, with all due
19 respect, but it is my position that this hearing
20 implicates the Sixth and Fourteenth Amendments. And
21 since I am appointed by federal court to represent
22 him there only, I am here as a courtesy to the Court
23 because I received notice to be here, and I have

1 been involved in Mr. Jackson's case, as a courtesy
2 to Mr. Jackson and the Ohio Public Defender's
3 Office.

4 THE COURT: If you wish, after
5 sentencing, it is, of course, incumbent upon this
6 Court to appoint, if you wish to address it at that
7 time, I would be more than happy to do so. But for
8 purposes of this hearing, counsel who represents is
9 present. I understand you feel there maybe a
10 conflict between your duties on the habeas corpus
11 case and this case, is that correct?

12 MR. PARKER: That is correct.

13 THE COURT: That is something I need
14 not determine. That is up to you, whatever you are
15 comfortable with.

16 MR. PARKER: It was my position
17 before the hearing, I think we put it in a motion
18 filed sometime ago, that it was my desire to
19 represent Mr. Jackson at this hearing, because of
20 that potential conflict.

21 THE COURT: Mr. Porter. I didn't
22 mean to interrupt you, but we should take these
23 things one at a time.

1 MR. PORTER: Mr. Jackson's position
2 today, Your Honor, is he's entitled to two appointed
3 counsel for this hearing. If Mr. Parker is not
4 appointed, then we are in a position of asking the
5 Court for a continuance until there is a second
6 attorney appointed.

7 THE COURT: In regard to that point,
8 I think the legislative intent and the main reason
9 that they came up with the two attorney
10 representation is that, without a doubt, the most
11 serious type of case that someone can be confronted
12 with and the two heads are better than one, for
13 purposes of any trial, I think that that is
14 mandatory.

15 Again, this case has been remanded for the
16 simple procedure of re-sentencing. Since it is as a
17 result of the appeal, you are the appeal attorney,
18 and at the appropriate time, it's my understanding
19 -- are you telling me that there is no other counsel
20 on the appeal case at this time?

21 MR. PORTER: That is correct.

22 MR. MORROW: Your Honor, if I may, I
23 hate to interrupt, I would like to add one bit of

1 information with respect to the counsel issue at an
2 appropriate time.

3 THE COURT: I think this would be an
4 appropriate time.

5 MR. MORROW: I believe that Mr.
6 Parker, when he filed his notice of appearance with
7 this Court, he filed a notice of appearance
8 indicating that he was counsel of record in this
9 case.

10 THE COURT: I understand that.

11 MR. MORROW: And that did not have
12 any qualification, any limitation as to his position
13 in this case. He has not yet, nor has he ever filed
14 a motion to be relieved from being counsel in this
15 case, and I think to suggest that there is a
16 conflict that arose from his representation on a
17 federal point, would be as a result of his own
18 created conflict. Since he still is, and the record
19 still reflects, that he is, not necessarily
20 appointed counsel, but he is counsel in this case,
21 and he's accepted that position, and I think needs
22 to be bounded by that, that he is still counsel of
23 record. So to suggest that there is only one

1 attorney for purposes of this re-sentencing, I
2 believe is not supported in the record.

3 THE COURT: Well I think what you
4 have stated is true. I am merely saying that that
5 is up to Mr. Parker. If he feels there is some
6 conflict, I am not going to insist that he proceed
7 at this time. You are counsel of record. That is
8 true. Let's go on to the next point, Mr. Porter.

9 MR. PORTER: Thank you, Your Honor.
10 I appreciate the Court letting me make the record in
11 this matter. I am renewing, and I understand the
12 Court overruled it yesterday, just renewing the
13 motion for continuance until such time as the
14 affidavit of bias and prejudice and the writ of
15 prohibition is decided. I understand that there is
16 no legal basis requiring you to continue the
17 hearing. We are requiring you just to exercise your
18 discretion. We filed with the Court just a copy, so
19 the record is clear, everyone's performance
20 including my own, will be judged in the future, that
21 the Appellate court will be aware that those two
22 other proceedings are pending.

23 THE COURT: That is what your job

1 is, Mr. Porter. The other thing is that I would
2 mention at this juncture is, this case has been
3 delayed for a very long period of time from what I
4 think should be expected to occur. That has
5 occurred, I believe, at one time I heard that both
6 sides were in agreement to continue the matter. And
7 I had a difficult time in getting the complete file
8 back from the Supreme Court, and then probably
9 through my error, it was returned, it sat over where
10 we store our records for several months before I
11 became aware that it had even been returned, and
12 that is what I think that was about in April that I
13 finally found that we had the record. I got it over
14 here, done what I have to do, and that then led to
15 the setting of the case. There is another factor
16 involved here, although a peripheral matter, I am
17 retiring as of the end of December, and I think it
18 is imperative that this case be disposed of. To
19 require another judge to come in, I am not even
20 aware of what procedure would be necessary. It
21 would be quite difficult. And for that reason, I
22 have insisted that this matter go forward, finding
23 no valid reason not to do so. Anything further?

1 MR. PORTER: I have a question.
2 Just so I understand the procedure, and I am able to
3 appropriately represent Mr. Jackson today. It is my
4 understanding, and I'll accept the Court's ruling on
5 limiting the evidence. With respect to Miss
6 Roberts, the Court permitted her to file her
7 exhibits.

8 THE COURT: I'll permit that in this
9 case. I'm just saying that that would be for
10 purposes of appeal only.

11 MR. PORTER: And we are requesting
12 that, and Mr. Jackson has brought some exhibits that
13 we have to make the same proffer in this matter.

14 THE COURT: Any exhibits you feel
15 necessary.

16 MR. PORTER: Other than that, I have
17 one additional legal argument, which has not been
18 raised in the pleadings. And it is regarding the
19 case of, and it is a relatively new case, come out
20 since Mr. Jackson was here previously. It is State
21 vs. Johnson and probably the Court is well aware of
22 it, Ohio Supreme Court, which deals with the issue
23 of merger and allied defenses, the Ohio Supreme

1 Court has changed its position. And the way I read
2 the case now is the same conduct, the Defendant
3 cannot be sentenced twice for the same conduct. We
4 are before the Court today just on the capital
5 offense. Nate's convictions for Aggravated Robbery
6 and Aggravated Burglary, if my understanding is
7 correct, will not be impacted by today's hearing.
8 If that is so, then if the Court was to re-sentence
9 Nathaniel to death and relied upon the
10 specifications which are Aggravated Burglary and
11 Aggravated Robbery, it would violate the Ohio
12 Supreme Court's recent decision in State vs.
13 Johnson. The cite on that is 128 OhSt.3rd, 153.

14 THE COURT: I missed the thrust of
15 your argument here, that both of the underlying
16 charges, what?

17 MR. PORTER: I'm sorry. I wasn't
18 clear. Nate has been convicted of Aggravated
19 Robbery and Aggravated Burglary. And those also are
20 the two capital specifications he has in this case.
21 It is Nathaniel's position today, Your Honor, is
22 that you can not use the --

23 THE COURT: You are saying that they

1 merge.

2 MR. PORTER: They merge and since
3 the, his convictions for Aggravated Burglary and
4 Aggravated Robbery remain in effect, the Court
5 cannot use that same conduct for purposes of the
6 specifications.

7 THE COURT: Let me hear argument.

8 MR. MORROW: Initially, I take issue
9 that Mr. Jackson has any sentence in place at this
10 point in time. So I think that there is a
11 presumption on the defense counsel that Mr. Jackson
12 has been sentenced on Aggravated Burglary and the
13 Aggravated Robbery. My position is, and it is based
14 upon the mandate that was issued from the Eleventh
15 District Court of Appeals, is that his sentence was
16 vacated. There is no sentence right now before this
17 Court. And so this Court will need to sentence Mr.
18 Jackson accordingly under the law with respect to
19 the four separate counts, or I'm sorry the three
20 separate counts.

21 THE COURT: Aggravated Robbery and
22 Aggravated Burglary.

23 MR. MORROW: That's correct. In

1 addition to the Aggravated Murder because as the
2 mandate from the Court of Appeals says, the sentence
3 is vacated and the case remanded for re-sentencing.
4 It didn't limit it to the death case, that Count One
5 is vacated. It said the sentence. And that is the
6 mandate from the Court of Appeals. So I think that
7 they presuppose that there is a pending sentence.
8 As I put in my motion, I believe Mr. Jackson is
9 being held in the state penitentiary and has been
10 held without a sentence. And that is the position
11 that the State maintains. And I think that the
12 merger issue -- just one second. And, Your Honor,
13 with respect to the merger issue, there is a
14 determination as to whether there were separate
15 animus that were related to each of the offenses,
16 and I think quite simply the Court can determine
17 there were indeed separate animus for each of the
18 offenses, for the Aggravated Murder, which was the
19 killing involved in it, the Aggravated Robbery,
20 which included the, I believe the removal of some of
21 Mr. Fingerhut's property, and the burglary, which
22 was the trespass into the house. So I think that
23 each of those constituted a separate animus formed

1 at different times and as such constitutes a
2 sufficient evidence for proceeding forward, without
3 the cases, without the offenses being merged.

4 THE COURT: You have the right to
5 respond.

6 MR. PORTER: I do, Your Honor, and I
7 understand the Court wasn't privy to the proceedings
8 in the Court of Appeals. All that was argued was
9 the same argument that was made in this Court, Your
10 Honor, with regard to the capital conviction itself
11 and not the Aggravated Robbery and Aggravated
12 Burglary. I think it is important to look at the
13 Court of Appeals decision on remand. I'm looking at
14 paragraph 27. We accordingly sustain, I'm sorry.
15 It says, paragraph 33. It says, "The sentence of
16 the Trumbull County Court of Common Pleas is
17 vacated." It doesn't say sentences. It says
18 "sentence." That was the only issue on appeal was
19 the Aggravated Murder. The Aggravated Robbery,
20 Aggravated Burglary were never argued on appeal. It
21 was never before the Court.

22 THE COURT: As one unit. They are
23 saying that there was a vacation of the sentence

1 period.

2 MR. PORTER: I don't read it the
3 same way, Your Honor.

4 THE COURT: Read that one more time.

5 MR. PORTER: "The sentence of the
6 Trumbull County Court of Common Pleas is vacated."
7 And when you read that in conjunction with the rest
8 of the opinion, it talks solely about the conviction
9 for Aggravated Murder. The word sentence is
10 important here when you read it in conjunction with
11 the rest of the opinion.

12 THE COURT: The Aggravated Murder,
13 of necessity, is predicated on the aggravating
14 circumstances of Aggravated Robbery and Aggravated
15 Burglary. You are saying for purposes of the
16 hearing, that those two should merge.

17 MR. PORTER: What I'm saying is, for
18 purposes of this hearing, the Court is not going to
19 re-sentence Nathaniel on the Aggravated Robbery.
20 I'm sorry. Should not, excuse me, Your Honor, or
21 should not re-sentence him on the Aggravated
22 Burglary. The only matter that is before this Court
23 is the Aggravated Murder.

1 THE COURT: I see your argument.
2 That is a novel argument. You are saying that the
3 Court of Appeals should have broken it down.

4 MR. PORTER: Should have, yes, but
5 given the argument in the Court of Appeals, the only
6 thing --

7 THE COURT: That is a very unique
8 argument as to the validity for the purposes of now.
9 I think that again, I must addresses this matter, as
10 I did the day of the original sentencing. And that
11 is to take into account the underlying aggravating
12 circumstances. Your argument, again, would likely
13 or properly be made to the higher Courts, and what
14 they would do with it, I have no idea. It is a
15 unique argument.

16 MR. PORTER: Thank you, Your Honor.

17 THE COURT: I thank you. I would
18 overrule that argument, however.

19 MR. PORTER: At this point, we have
20 no other matters to bring to the Court prior to
21 sentencing. We'll be, with the Courts permission,
22 will be proffering what we would have been arguing
23 at the sentencing hearing at the conclusion.

1 THE COURT: Thank you. Would you be
2 kind enough to bring your client forward?

3 Good afternoon Mr. Jackson.

4 DEFENDANT: Good afternoon, Your
5 Honor.

6 THE COURT: Let me ask. Counsel, do
7 you have anything further to say at this time?

8 MR. PORTER: We do not, given the
9 Court's order, limiting the evidence, we'll make our
10 presentation through the proffer. Mr. Jackson would
11 like to make a statement.

12 THE COURT: Very good. Please
13 proceed.

14 DEFENDANT: Your Honor, I would just
15 like to say, doing my time in Trumbull Correctional,
16 I went down there and obtained a certificate in
17 basic skills computer class and I passed advanced
18 class and also became a tutor down there and also
19 got a certificate in the music program, and I was
20 trying to get into other different programs that
21 they have down there. I haven't been in any trouble
22 since I have been on death row since 2007 and that
23 was a little minor situation, but I haven't been in

1 any trouble or anything since then, Your Honor.
2 Since I have been off of death row, I understand a
3 lot of things. In a different situation and
4 different environment I was in, I have learned to
5 adjust to the environment without any problem, Your
6 Honor.

7 THE COURT: It's one of those sad
8 things of life, I see people that come to a
9 revelation at a time that it doesn't do them the
10 good that it would had done, had they been able to
11 do it earlier. I accept what you are saying.

12 This Court has considered the record and oral
13 statements, as well as the purposes and principles
14 of sentencing under O.R.C. Section 2929.11, and has
15 again, balanced the seriousness and the recidivism
16 factors of Section 2929.12.

17 Now pursuant to law, the Trial Court this
18 day, August 14, 2012, having determined in a
19 separate opinion of specific findings, which will be
20 filed this afternoon, have found that the
21 aggravating circumstances as to the count of
22 Aggravated Murder outweigh the mitigating factors by
23 proof beyond a reasonable doubt. I have heard from

1 the Defendant today. And I find that there is no
2 good or sufficient reason why sentence should not be
3 pronounced at this time. Do you have any reason why
4 I should not do so?

5 DEFENDANT: Yes, sir, Your Honor. I
6 feel that doing my time, I have learned to find
7 myself and I know who I am right now, and I would
8 like to be placed back on, I wouldn't like to be
9 placed back on death row. I really wouldn't.

10 THE COURT: The Court has considered
11 the factors under O.R.C. Section 2929.14 and makes
12 the following findings.

13 1) The shortest prison time will demean the
14 seriousness of the Defendant's conduct.

15 2) The longest prison time is appropriate
16 because the Defendant committed the worst form of
17 offense.

18 3) Multiple prison terms are necessary to
19 protect the public from future crime and to punish
20 the offender.

21 4) Consecutive prison sentences are not
22 disproportionate to the seriousness of the
23 Defendant's conduct and to the danger the offender

1 poses to the public.

2 5) The harm caused by the multiple offenses
3 was so great that no single prison term for any of
4 the offenses committed as part of a single course of
5 conduct adequately reflects the seriousness of the
6 Defendant's conduct.

7 6) The Defendant's history of criminal
8 conduct demonstrates that consecutive sentences are
9 necessary to protect the public from future crime by
10 the Defendant.

11 It is therefore, Ordered, Adjudged and
12 Decreed that the Defendant, Nathaniel Jackson, be
13 taken from the courtroom to the Trumbull County jail
14 and from thence to the Correction Reception Center
15 at Lorain, Ohio, and thereafter be sentenced to
16 death on August 15, 2013, on Count One, and
17 imprisoned therein for the stated prison term of ten
18 (10) years on Count Three, plus a mandatory term of
19 three (3) years on the Firearms specification to be
20 served prior to and consecutive to the sentence
21 imposed in Count Three; ten (10) years on Count
22 Four, plus a mandatory term of three (3) years on
23 the Firearms Specification to be served prior to and

1 consecutive to the sentence imposed on Count Four.
2 Sentence on Count Four to be served consecutive to
3 the sentence imposed on Count Three. The Firearms
4 Specification in Count Three and Four shall merge as
5 one sentence in Count Three as a matter of law.

6 It is Ordered that cost of prosecution be
7 taxed to the Defendant.

8 MR. PORTER: Your Honor, could we
9 ask the Court to waive costs. He's been
10 incarcerated since 2001. He has no ability to pay
11 the court costs. He's obviously indigent.

12 THE COURT: I would ask you to
13 submit a written affidavit to that effect that he is
14 indigent, and I will approve that.

15 MR. PORTER: Thank you, Your Honor.

16 THE COURT: Upon release from
17 prison, this is rather -- the law requires what I am
18 about to tell you.

19 Upon release from prison at the option of the
20 Adult Parole Authority, it would be mandatory that
21 they place you on a post release control program for
22 a mandatory five (5) years. During that time they
23 can add additional sanctions while you are released.

1 They can, for a serious enough violation, cause you
2 to be placed back in prison in segments of nine (9)
3 months each, not to exceed more than one half of the
4 prison term. If you were convicted of a subsequent
5 felony while on that control, there is a statute
6 which would allow the parole board to put you back
7 in prison for twelve (12) months or the amount of
8 time remaining on post release control, whichever is
9 greater. And any new time picked up for a new
10 felony would have to be served consecutive to any
11 time owed on these particular charges.

12 In regard to the Aggravated Murder charge,
13 even though you have received the death penalty, if
14 for any reason, you receive a sentence of life with
15 no eligibility for parole, and if for any reason you
16 are paroled, you will be on parole for the rest of
17 your life. You understand that?

18 DEFENDANT: Yes, sir.

19 MR. MORROW: If I may, Your Honor,
20 that mandatory five (5) year post release control,
21 that is with respect to both counts Three and Four?

22 THE COURT: That is for both Counts
23 Three and Four, the Aggravated Burglary and Robbery.

1 MR. MORROW: Thank you, Your Honor.

2 THE COURT: As I said, the Court's
3 finding on the weighing of mitigating factors will
4 be filed this afternoon. For the record, is the
5 prosecution satisfied that the Court has addressed
6 the matter?

7 MR. MORROW: Some additional
8 housekeeping, obviously with the requirement that
9 Mr. Jackson be advised of the good time provision
10 while he may not be eligible for it.

11 THE COURT: There is one other thing
12 I failed to do here.

13 MR. MORROW: And his Appellate
14 rights as well.

15 THE COURT: Rule 32. Since you have
16 been convicted and sentenced, you have the right to
17 have an appeal filed in this case. If you are
18 unable to pay the cost of the appeal, those will be
19 paid on your behalf by the State of Ohio. You have
20 the right, of course, to counsel. And if you are
21 unable to afford counsel, you have the right to have
22 counsel appointed at the expense of the State. Any
23 documents that you require, you are entitled to have

1 those documents without any cost, if you are unable
2 to pay. You have the right to have the notice of
3 appeal timely filed on your behalf to start that
4 procedure. And upon your request, this Court shall
5 appoint counsel for appeal.

6 I understand Mr. Porter here acknowledges
7 that he is representing you. You are entitled to a
8 second lawyer to represent you. And if you make
9 application to this Court, I will attempt to find
10 someone who is death qualified that is eligible to
11 help. I would suggest, Mr. Porter, that you travel
12 in these circles, it would be helpful if your client
13 wishes appointment of counsel that perhaps you find
14 somebody appropriate that I could appoint. And if
15 you will submit such a motion, I will be glad to
16 address that. The Court of Appeals can also do
17 that. Good luck to you.

18 MR. MORROW: I still think that
19 there is a necessity to advise him of the potential
20 for the good time for each day of credit he gets up
21 to three days.

22 THE COURT: There is a thing, that
23 is right. That is another point. Under the present

1 set up of law, there is an inducement to everybody
2 in prison, you are probably aware of it, that you
3 get good time as well as bad time. And I think that
4 ordinarily applies on a set sentence that you expect
5 to get out of prison. If you were successful in
6 some way, as this matter proceeds through the Court
7 where you did get out on parole someday, then that
8 good time would be something you should keep in
9 mind. Those guards out there try to make sure that
10 that things go smoothly. It is to your benefit to
11 help them have that happen.

12
13 (END OF HEARING AT 2:25 p.m.)
14
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23

REPORTER'S CERTIFICATE

I HEREBY CERTIFY the foregoing is a true
and correct transcript of the hearing held on
August 14, 2012, as shown by the stenographic
notes taken by me at the time of said hearing.

10/4/2012

DATE

Mary Ann Mills

MARY ANN MILLS

The Supreme Court of Ohio

Court of Common Pleas for

TRUMBULL County,

WARREN, Ohio

CERTIFICATE

S.C. Case No. 2012-1644

C.P. Case No. 01-CR-794

THE STATE OF OHIO

v.

NATHANIEL JACKSON

In accordance with S.Ct. Prac. R. 19.5, I hereby certify that the attached is the record in this case, consisting of the original papers and exhibits to those papers; the transcript of proceedings and exhibits, along with a computer diskette of the transcript, if available; and certified copies of the journal entries and the docket of the case.

I further certify that an index, prepared in accordance with S.Ct. Prac. R. 19.5(B)(1) is also attached.

I further certify that I have sent a copy of the index to all counsel of record in this case.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name as Clerk of the Court of Common Pleas for TRUMBULL County, Ohio, and affixed the seal of the Court, on this 31 day of DECEMBER, 20 12.

Clerk of the Court of Common Pleas in and for
TRUMBULL County, Ohio

By K. Reeves Deputy

Telephone: (330-675-2557)

E-mail: _____



IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

-vs-

NATHANIEL JACKSON,

Defendant.

Case No. 01-CR-794

Judge Ronald J. Rice

2017 JAN 13 AM 8:30
TRUMBULL COUNTY
CLERK OF COURTS
NATHANIEL JACKSON
STATE OF OHIO

**Nathaniel Jackson's Motion
For Leave To File A Motion For A New Mitigation Trial**

Nathaniel Jackson ("Movant") pursuant to Criminal Rule 33, moves this Court for leave to file a motion for a new sentencing hearing on the following grounds:

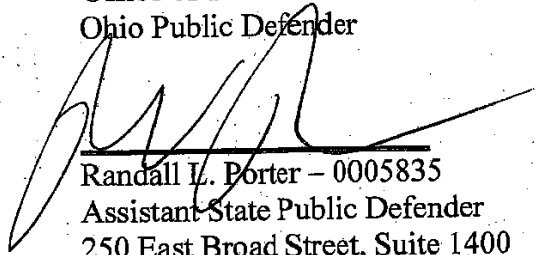
- (1) There was irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial in the penalty phase of this case [Crim. R. 33(A)(1)];
- (2) The verdict of a death sentence in this case is not sustained by sufficient evidence or is contrary to law because the death sentence was imposed in violation of the Sixth and Fourteenth Amendments to the United States Constitution. *Hurst v. Florida*, __ U.S. __, 136 S. Ct. 616 (2016) [Crim. R. 33(A)(4)]; and
- (3) The death sentence in this case is the result of an error of law inasmuch as it was imposed in violation of the Sixth and Fourteenth Amendments to the United States Constitution. *Hurst v. Florida*, __ U.S. __, 136 S. Ct. 616 (2016) [Crim. R. 33(A)(5)].

The proposed New Trial Motion is attached. The following memorandum and affidavit support this Motion for Leave to File.

Respectfully submitted,



Office of the
Ohio Public Defender



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Counsel for Nathaniel Jackson

MEMORANDUM IN SUPPORT

I. Criminal Rule 33 Authorizes Courts to Grant a Motion for New Trial

A trial court may grant a motion for a new trial when any one of the following grounds exist: (a) irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial; (b) the verdict is not sustained by sufficient evidence or is contrary to law; or (c) an error of law occurred at trial. See, Crim. R. 33(A)(1)(4) and (5). As shown in the proposed motion for new trial, attached hereto, all three of these grounds exist in this case.

II. Movant was Unavoidably Prevented from Filing His Motion Within 14 Days of the Jury's Verdict

Pursuant to Criminal Rule 33(B), a Motion for New Trial ordinarily must be filed "within fourteen days after the verdict was rendered, or the decision of

the Court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein." Crim. R. 33(B).

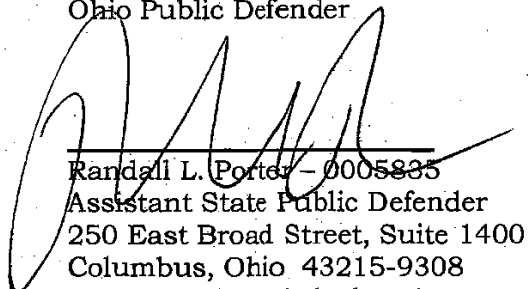
The court sentenced Movant to death on December 9, 2002. *Hurst* was decided January 12, 2016. At sentencing, counsel could not have anticipated the United States Supreme Court's holding in *Hurst*. Thus, Thomas could not have filed his motion for new trial within fourteen days of the imposition of sentence. In *State v. Burke*, 10th Dist. No. 03AP-1242, 2005-Ohio-891, ¶12 the court of appeals reversed the denial of a motion for a new trial filed seventeen months after sentencing. The court ruled that the motion for leave to file was timely filed because the case involved the death penalty case and the motion, if granted, could substantially affect the defendant's death sentence. *Id.* Here, the motion for leave to file a new trial motion is being tendered to the Court within 12 months of the United States Supreme Court's announcement in *Hurst*. Furthermore, if granted, the new trial motion would vacate the death sentence and require a new mitigation hearing. *Id.*

CONCLUSION

Movant respectfully asks the Court to grant him leave to file the attached *Motion for New Mitigation Trial Pursuant to Criminal Rule 33 and Hurst v.*

Florida, instanter, and deem the attached motion filed effective the date of the Court's Order granting this motion.

Office of the
Ohio Public Defender

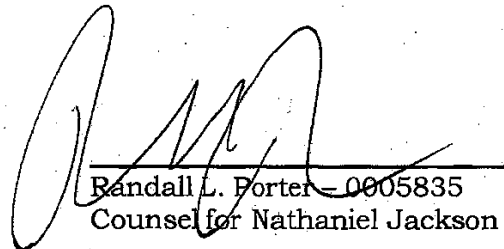


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Counsel for Nathaniel Jackson.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Nathaniel Jackson's Motion For Leave To File A Motion For A New Mitigation Trial* was served by U.S. mail to Luwayne Annos, Assistant Prosecuting Attorneys, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 11th day of January, 2017.



Randall L. Porter - 0005835
Counsel for Nathaniel Jackson

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

-vs-

NATHANIEL JACKSON,

Defendant.

Case No. 01-CR-794

: Judge Ronald J. Rice

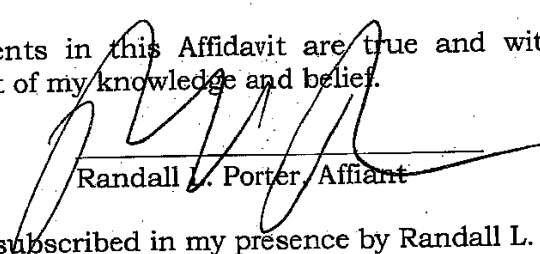
AFFIDAVIT

State of Ohio,
Franklin County, ss:

Randall L. Porter, being first duly cautioned and sworn, deposes and says:

1. I am counsel of record for Nathaniel Jackson in the attached *Motion For Leave To File A Motion For A New Mitigation Trial*
2. Nathaniel Jackson was sentenced to death on December 9, 2002.
3. On January 12, 2016, the United States Supreme Court announced its decision in *Hurst v. Florida*, 136 S.Ct. 616 (2016).
4. Counsel could not have filed a motion based on *Hurst* prior to January 12, 2016. *Hurst* is a complex decision, has generated considerable discussion and debate about the parameters of its holding, and takes time to digest and understand.

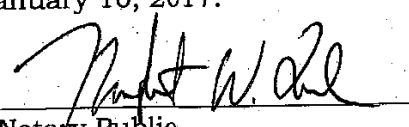
5. All of the statements in this Affidavit are true and within my personal knowledge, to the best of my knowledge and belief.


Randall L. Porter, Affiant

Sworn to before me and subscribed in my presence by Randall L. Porter, who is personally known to me, on January 10, 2017.



ROBERT W. LOVE
NOTARY PUBLIC, STATE OF OHIO
COMMISSION EXPIRES 11-23-19


Notary Public

ROBERT W. LOVE
MISSISSIPPI STATE OF GRACE
2007-07-14



IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

-vs-

NATHANIEL JACKSON,

Defendant.

:

: Case No. 01-CR-794

:

: Judge Ronald J. Rice

:

**Nathaniel Jackson's Motion For A New Mitigation Trial
Pursuant To Criminal Rule 33 And *Hurst v. Florida***

Nathaniel Jackson ("Movant") pursuant to Criminal Rule 33, moves this Court to grant a new trial on the following grounds:

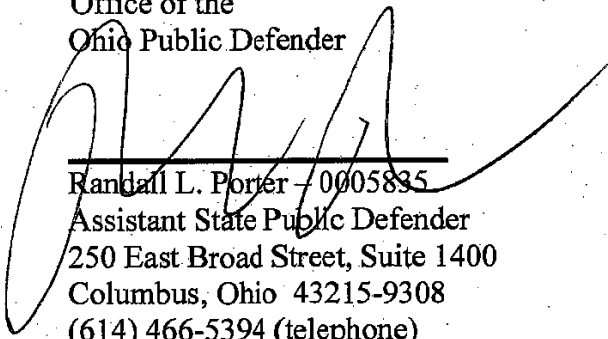
- (1) There was irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial in the penalty phase of this case [Crim. R. 33(A)(1)];
- (2) The verdict of a death sentence in this case is not sustained by sufficient evidence or is contrary to law because the death sentence was imposed in violation of the Sixth and Fourteenth Amendments to the United States Constitution. *Hurst v. Florida*, __ U.S. __, 136 S. Ct. 616 (2016) [Crim. R. 33(A)(4)]; and
- (3) The death sentence in this case is the result of an error of law inasmuch as it was imposed in violation of the Sixth and Fourteenth Amendments to the United States Constitution. *Hurst v. Florida*, __ U.S. __, 136 S. Ct. 616 (2016) [Crim. R. 33(A)(5)].

The following memorandum further supports this motion.

**Attachment 1 to Motion for
Leave to File Defendant's Motion
for New Mitigation Trial Pursuant
to Criminal Rule 33 and *Hurst v.
Florida*, and to deem this motion
filed instant.**

Respectfully submitted,

Office of the
Ohio Public Defender



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Counsel for Nathaniel Jackson

MEMORANDUM IN SUPPORT

I. Criminal Rule 33 Authorizes Court to Grant a Motion for New Trial in this Case

Criminal Rule 33 authorizes this Court to grant a new trial when any one several grounds exist: (1) irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial; (2) the verdict is not sustained by sufficient evidence or is contrary to law; or (3) an error of law occurred at trial. See, Crim. R. 33(A)(1)(4) and (5). As will be shown below, all three of these grounds exist in this case.

II. Irregularity in Proceedings, or in Order or Ruling of the Court, or Abuse of Discretion by the Court

On January 12, 2016, the United States Supreme Court decision in *Hurst* signaled a sea-change in death penalty jurisprudence. *Hurst v. Florida*, ___ U.S. ___, 136 S. Ct. 616, 193 L.Ed.2d 504 (2016). After *Hurst*, it is clear that

Ohio's death penalty scheme is unconstitutional. The procedure the trial court employed; to reduce the jury's sentencing verdict to a mere recommendation regarding is an irregularity in the proceedings that deprived Movant of a fair trial during the penalty phase.

A. The Supreme Court's Decision in *Hurst v. Florida*.

Hurst held that Florida's capital sentencing structure violated the Sixth Amendment right to trial by jury because it required the judge, not the jury, to make the factual determinations necessary to support a sentence of death. *Hurst*, 136 S.Ct. at 619. Pursuant to *Hurst*, Ohio's capital sentencing is likewise unconstitutional inasmuch as the trial judge, not the jury, makes the factual determinations necessary to impose a sentence of death.

In *Hurst*, a Florida jury convicted Timothy Hurst of first-degree murder. *Id.* at 619-20. In Florida, the maximum sentence a defendant may receive for first degree murder is life imprisonment. Fla. Stat. § 775.082(1). The defendant can only receive the death penalty after an additional sentencing proceeding "results in findings by *the court* that such person shall be punished by death." *Id.* (emphasis added). Otherwise, the defendant is punished by life imprisonment without parole. *Id.*

Accordingly, after Hurst was found guilty of first-degree murder, the judge conducted an evidentiary hearing before the jury. *Hurst*, 136 S. Ct. at 620. At the conclusion of the evidentiary hearing the jury rendered an "advisory sentence" of death without specifying the factual basis of its recommendation. *Id.* Under Florida law, the trial court must give the jury's

recommendation “great weight” but must independently weigh the aggravated and mitigating circumstances before entering a sentence of life imprisonment or death. *Id.* The trial court in Hurst’s first trial did this, and imposed a death sentence. *Id.*

On post-conviction review, the Florida Supreme Court vacated Hurst’s death sentence. *Id.* At his re-sentencing, a jury again recommended death and the judge so sentenced Hurst, basing her decision on the Court’s independent findings of aggravating circumstances as well as the jury’s recommendation. *Id.*

The United States Supreme Court accepted certiorari of Hurst’s appeal to resolve the tension between *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002) and its earlier decisions, *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989) and *Spaziano v. Florida*, 468 U.S. 447, 104 S.Ct. 3154, 82 L.Ed.2d 340 (1984). In *Ring*, the Supreme Court held that the Sixth Amendment requires a jury to find any fact necessary to qualify a capital defendant for a death sentence. *Hurst*, 136 S. Ct. at 621. Although *Ring* did not expressly overrule *Hildwin* and *Spaziano*, cases which approved the constitutionality of Florida’s capital sentencing scheme, *Ring*’s holding seemed to compel such an outcome. *Hurst* laid the confusion to rest, holding that Florida’s law “violates the Sixth Amendment in light of *Ring*.” *Id.* at 620. *Hurst* “expressly overrule[d]” *Spaziano* and *Hildwin*. *Id.* at 623

Justice Sotomayor explained in the 8-1 majority opinion that “[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. *A mere recommendation is not enough.*” *Id.* at 619

(emphasis added). The Supreme Court held that states like Arizona, the state whose sentencing scheme was at issue in *Ring*, “Florida does not require the jury to make the critical findings necessary to impose the death penalty. Rather, Florida requires a judge to find these facts.” *Id.* at 622. The Supreme Court continued: “Although Florida incorporates an advisory jury verdict that Arizona lacked, we have previously made clear that this distinction is immaterial.” *Id.* Because “the maximum punishment Timothy Hurst could have received, without any judge-made findings, was life in prison without parole,” and because “a judge increased Hurst’s authorized punishment based on her own factfinding,” the Court held that “Hurst’s sentence violates the Sixth Amendment.” *Id.*

In so holding, the Court rejected Florida’s argument that the jury’s recommendation necessarily included a finding of an aggravating circumstance, noting “the Florida sentencing statute does not make a defendant eligible for death until ‘findings *by the court* that such person shall be punished by death.’” *Id.* (quoting Fla. Stat. § 775.082(1)) (emphasis in opinion). Because “[t]he trial court *alone* must find ‘the facts . . . [t]hat sufficient aggravating circumstances exist’ and ‘[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances,’” the Court found that a Florida jury’s function is solely advisory and does not satisfy the constitutional standard outlined by *Ring*. *Id.* (quoting § 921.141(3)) (emphasis in opinion).

B. Similarities Between Ohio and Florida's Capital Sentencing Schemes.

Ohio's death-penalty sentencing scheme is similar to Florida's in several significant aspects. Pursuant to R.C. 2929.03(B), a jury in a capital case must find the defendant guilty or not guilty of the principal charge and then it must also decide "whether the offender is guilty or not guilty of each specification." The jury is instructed that each aggravating circumstance "shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification." *Id.*

If the jury finds a defendant guilty of both the charge and one or more of the specifications, then, like in Florida, a sentencing hearing is conducted where:

The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender.

R.C. 2929.03(D)(1). During this sentencing hearing, the defendant has the burden of introducing evidence of any mitigating factors, but the prosecution has the ultimate burden of "proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing

are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death." *Id.*

At the conclusion of the sentencing hearing, if the jury unanimously finds that the prosecutor has met this burden, "the jury shall *recommend* to the court that the sentence of death be imposed on the offender." R.C. 2929.03(D)(2) (emphasis added). The finding is not required to be rendered in writing and the jury's sentencing recommendation verdict does not set forth the factual findings underlying the jury's recommendation.¹

Once an Ohio jury makes a death-sentence recommendation, then, like in Florida, the Ohio trial court must independently consider "the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section." R.C. 2929.03(D)(3). The trial court can then sentence a defendant to death if it finds "by proof beyond a reasonable doubt . . . that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors." *Id.* As in Florida, when the Ohio trial court imposes a death sentence it shall:

state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors.

¹ In Florida, the jury's recommendation does not need to be unanimous. *Hurst*, 136 S. Ct. at 620. Nevertheless, the point is that, like Florida, Ohio juries make a recommendation to the trial court for imposing a death sentence.

R.C. 2929.03(F).

In sum, while a jury in Ohio has the responsibility of finding that one or more aggravating circumstances exist as part of the verdict at the capital defendant's trial; that does not complete the capital sentencing process. Rather, under Ohio law, the jury must then conduct a weighing process during the sentencing hearing. Once the weighing process is complete, the jury may make a death-sentence *recommendation* to the trial court. The Court in *Hurst* emphasized the fact that in Florida the jury's decision was advisory. Because Ohio's scheme similarly classifies a jury's decision as a recommendation (i.e., "advisory"), Ohio's death penalty statute is likewise unconstitutional.

In *Hurst*, the Court broadly criticized the Florida scheme because the jury "does not make specific factual findings with regard to the existence of mitigating or aggravating circumstances. A Florida trial court no more has the assistance of a jury's findings of fact with respect to sentencing issues than does a trial judge in Arizona." *Hurst* 136 S. Ct. at 622 (quoting *Walton v. Arizona*, 497 U.S. 639, 648, 110 S.Ct. 3047, 111 L.Ed.2d 511 (1990)). The Court's opinion not only pointed out the absence of factual findings about the existence of aggravating circumstances or mitigating factors, but also the absence of any findings about the weighing of those factors. *Id.*

In Ohio, the defendant has "the burden of going forward with the evidence of any factors in mitigation of the imposition of the death sentence." R.C. § 2929.03(D)(1). Ohio law requires a jury to render a unanimous verdict that the aggravating circumstance (alleged in the indictment and proven

beyond a reasonable doubt in the guilt determination phase of trial) outweighs the mitigating factors beyond a reasonable doubt before the jury may recommend a sentence of death. *Id.* However, the Ohio statute does not require the jury to make any specific factual findings as to: (1) whether the defendant proved the existence of any mitigating factor (or to what degree defendant did so), (2) which mitigating factors the defendant established; or (3) what weight the jury accorded each mitigating factor. Indeed, the Ohio Supreme Court has rejected all efforts to require that the jury make any factual finding about the existence of mitigating factors.

As we concluded in *Jenkins, supra*, at 177, such written findings are not an "indispensible ingredient" in assisting appellate courts in determining whether the death sentence was arbitrarily or capriciously imposed. Additionally, while the *jury* is not required to do so, pursuant to R.C. 2929.03(F) the *trial judge* must make specific written findings as to both aggravating and mitigating circumstances including a weight evaluation. As such, these findings serve to enhance the record available upon appellate review. In addition, the statutory requirement that the appellate court make an independent determination of sentence appropriateness is an additional safeguard against arbitrary imposition of the death penalty and is not merely the answer to a constitutional mandate of proportionality review. Issue 5 is not well-taken.

State v. Buell, 22 Ohio St. 3d 124, 137, 489 NE.2d 795 (1986), *superseded by statute on other grounds*, *State v. Riley*, 2007-Ohio-879, ¶¶ 26-27 (emphasis added).

The Ohio statute does not require the jury to make any specific findings of fact about mitigating factors, nor does it ask the jury to make any specific findings about their balancing of the mitigating and aggravating factors.

Therefore, the judge must implement a sentence without those critical findings.² Absent those factual findings, and given the advisory nature of the jury's sentencing recommendation, the Ohio death penalty scheme suffers from the same constitutional deficiencies as the scheme in Florida and is unconstitutional.

C. The Supreme Court of Ohio's Statements Comparing Ohio and Florida.

Going back to at least 1986, and as recently as 2014, the Supreme Court of Ohio has cited the now overruled *Spaziano* as favorable authority to uphold the constitutionality of Ohio's own capital sentencing scheme. In holding Florida's capital sentencing structure to be unconstitutional, *Hurst* also "expressly overrule[d]" *Spaziano v. Florida* and *Hildwin v. Florida*, the United States Supreme Court's prior precedent upholding Florida's scheme. *Hurst*, 136 S. Ct. at 623. The Supreme Court stated, "Time and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*." *Hurst*, 136 S. Ct. at 624. The Court's decision to overrule *Spaziano* is strong evidence of the unconstitutionality of Ohio's own capital sentencing structure. On several occasions, the Supreme Court of Ohio favorably cited *Spaziano* as authority to uphold Ohio's own scheme.

² Unlike in Ohio, a sentencing judge in Florida could "override" an "advisory jury verdict [recommending life]," but as a practical matter, that did not actually happen in *Hurst*'s case, nor has any judge overridden a jury recommendation in Florida for over 15 years. *Hurst*, 136 S. Ct. at 625-26. Thus in practice, the Florida scheme functions similarly to Ohio's.

Perhaps most damning to the constitutionality of Ohio's capital sentencing structure is the decision in *State v. Rogers*, 28 Ohio St. 3d 427, 504 N.E.2d 52 (1986), *rev'd on other grounds*, 32 Ohio St.3d 70. In *Rogers*, the Court stated, "Florida's statutory system, *which is remarkably similar to Ohio's*, was expressly upheld in the case of *Spaziano v. Florida* (1984), 468 U.S. 447. *Rogers*, 28 Ohio St. 3d at 430 (emphasis added). The 1986 version of R.C. 2929.03 at issue in *Rodgers* was substantially similar to the current version of the statute with the same problematic "recommendation" language. See R.C. 2929.03(D)(2) (1986) ("If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender.").³

In 2014, the Supreme Court of Ohio again cited *Spaziano* favorably:

The starting point for constitutional analysis of Davis's claim is the recognition that although the Sixth Amendment guarantees the right to trial by jury, neither the Sixth nor the Eighth Amendment creates a constitutional right to be *sentenced* by a jury, even in a capital case. "[D]espite its unique aspects, a capital sentencing proceeding involves the same fundamental issue involved in any other sentencing proceeding—a determination of the appropriate punishment to be imposed on an individual. * * * The Sixth Amendment never has been thought to guarantee a right to a jury determination of that issue." *Spaziano v. Florida*, 468 U.S. 447, 459, 104 S.Ct. 3154, 82 L.Ed.2d 340 (1984). See also *Proffitt v. Florida*, 428 U.S. 242, 252, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976) (plurality opinion); *Harris v. Alabama*, 513 U.S. 504, 515, 115 S.Ct. 1031, 130 L.Ed.2d 1004 (1995) ("The Constitution permits the trial judge, acting alone, to impose a capital sentence").

³ The 1986 version of the statute is attached to this motion as "Exhibit A."

State v. Davis, 139 Ohio St. 3d 122, 130, 2014-Ohio-1615 at ¶ 39 (emphasis original). However, *Hurst* stated that “[t]he Sixth Amendment *requires a jury, not a judge, to find each fact necessary to impose a sentence of death*. A mere recommendation is not enough.” *Id.* at 619 (emphasis added). Thus the Supreme Court of Ohio’s previous reliance on *Spaziano* is now undermined by the holding in *Hurst*.

Ohio has unabashedly proclaimed that the jury verdict at the mitigation phase of a capital trial is merely a recommendation to the trial court – where the real power to sentence a defendant to death resides. The Supreme Court of Ohio decided that question thirty years ago:

Ohio has no sentencing jury. All power to impose the punishment of death resides in the trial court which oversees the mitigation or penalty phase of the trial. The duty of the trial court is set forth in R.C. 2929.03(D)(3).

Immediately obvious is that, under this provision, the jury provides only a *recommendation* as to the imposition of the death penalty. The trial court must thereafter independently re-weigh the aggravating circumstances against the mitigating factors and issue a formal opinion stating its specific findings, before it may impose the death penalty. R.C. 2929.03(F). It is the trial court, not the jury, which performs the function of sentencing authority. Thus, no “sentencing jury” was involved in the proceedings below.

Rogers, 28 Ohio St. 3d. at 429 (emphasis in opinion). The Ohio Supreme Court has a long history of rejecting defense counsel’s claim that it is error to inform a capital jury that their verdict is a mere recommendation, and has done so precisely because telling the jury that its sentencing verdict is merely a recommendation is an accurate statement of Ohio law. *State v. Jenkins*, 15 Ohio St.3d 164, 200-203, 473 N.E.2d 264 (1984) (Jury instruction that

mitigation phase death verdict was recommendation held to be accurate statement of Ohio law); accord, *State v. Williams*, 23 Ohio St. 3d 16, 21-22, 490 N.E.2d 906 (1986); *State v. Scott*, 26 Ohio St. 3d 92, 103-104, 497 N.E.2d 55 (1986); *State v. Thompson*, 33 Ohio St. 3d 1, 6, 514 N.E.2d 407 (1987); *State v. Williams*, 38 Ohio St. 3d 346, 356-357, 528 N.E.2d 910 (1988) *State v. Bradley*, 42 Ohio St. 3d 136, 147, 538 N.E.2d 373 (1989) *State v. Steffen*, 31 Ohio St. 3d 111, 113-114, 509 N.E.2d 383 (1987); *State v. DePew*, 38 Ohio St. 3d 275, 280, 528 N.E.2d 542 (1988); *State v. Beuke*, 38 Ohio St. 3d 29, 34-35, 526 N.E.2d 274 (1988); *State v. Poindexter*, 36 Ohio St. 3d 1, 3, 520 N.E.2d 568 (1988); *State v. Johnson*, 46 Ohio St. 3d 96, 105-106, 545 N.E.2d 635 (1989); *State v. Durr*, 58 Ohio St. 3d 86, 93-94, 568 N.E.2d 674 (1991); *State v. Milles*, 62 Ohio St. 3d 357, 375, 582 N.E.2d 972 (1992); *State v. Grant*, 67 Ohio St. 3d 465, 472, 620 N.E.2d 50 (1993); *State v. Carter*, 72 Ohio St. 3d 545, 559, 651 N.E.2d 965 (1995), *State v. Keith*, 79 Ohio St. 3d 514, 517-519, 684 N.E.2d 47 (1997).

Similarly, when the district courts of appeals considered death sentence cases on an appeal of right, they universally held that a jury verdict of death was only a recommendation under Ohio law. *State v. Roe*, 10th Dist. No. 86AP-59, 1987 Ohio App. LEXIS 8490, *69-70 (Aug. 25, 1987); *State v. Fort*, 8th Dist. No. 52929, 1988 Ohio App. LEXIS 384, *59-61, (Feb. 4, 1988); *State v. Maurer*, 5th Dist. No. CA-7253, 1988 Ohio App. LEXIS 1608, *26-27, (April 25, 1988); *State v. Montgomery*, 1988 Ohio App. LEXIS 3297, *10-11, (, August 12, 1988); *State v. Jackson*, 6th Dist. No. L-86-395, 1989 Ohio App. LEXIS 5064, * 39-40

(Oct. 5, 1989); *State v. Moore*, 1st Dist. No. C-950009, 1996 Ohio App. LEXIS 2617, *54 (June 26, 1996).

Finally, the Federal Courts have recognized that, in Ohio, the jury does not impose a death sentence and thus it is an accurate statement of Ohio law to instruct the jury that its death verdict is merely a recommendation. *Beuke v. Collins*, 1995 U.S. Dist. LEXIS 22095, *102 (S.D. Ohio Oct. 19, 1995).

This long line of cases demonstrates that, in Ohio as in Florida pre-*Hurst*, the trial judge is the sentencing authority: the jury's role is merely to provide an advisory recommendation to the trial court if the jury recommends a death sentence.⁴ *Hurst's* holding that Florida's procedure of basing a death sentence on an advisory jury recommendation violated the Sixth Amendment was unconstitutional (*Hurst*, 136 S. Ct. at 621), is equally applicable to Ohio.

D. The Supreme Court of Ohio Granted Relief Premised on *Hurst*.

In *State v. Kirkland*, the Supreme Court of Ohio granted a motion for relief⁵ premised on *Hurst* and remanded the case for a new mitigation and sentencing hearing. *State v. Kirkland*, 2010-0854, 2016-Ohio-2807 (05/04/2016 Case Announcements) at p. 3. Prior to *Hurst*, the Court in *Kirkland* had attempted to cure prejudicial prosecutorial misconduct in the penalty phase by conducting its own deliberations whether the aggravating circumstances outweighed the mitigating factors. *See State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966 at ¶¶ 96, 97. The Court, after *Hurst*, found

⁴ Unlike Florida, in Ohio the trial court must follow the jury's recommendation if the jury recommends a life sentence. R.C. 2929.03(D)(2).

⁵ *See* S. Ct. Prac. Rule 4.01(A), Motion for order or relief.

that the jury must weigh the aggravating circumstances against the mitigating factors in a new penalty phase trial. Thus the Supreme Court of Ohio' had held that *Hurst* applies to the penalty phase of Ohio's capital sentencing scheme.

E. The Weighing of Aggravating and Mitigating Factors Implicates *Hurst*.

Both federal and state courts have concluded that weighing determinations are factual findings that must be made by juries. The number of jurisdictions so holding is likely to increase because of the broad language of *Hurst*. "The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." *Hurst*, 136 S. Ct. at 619

A Missouri Federal District Court concluded the Missouri statutory scheme violated the Sixth Amendment in light of *Hurst* and *Ring*. *McLaughlin v. Steele*, 173 F. Supp.3d 855, 896 (E.D. Mo. Mar. 22, 2016). The court found that "the weighing of mitigating and aggravating circumstances is a finding of fact." *Id.* See also *State v. Whitfield*, 107 S.W.3d 253, 259-61 (Mo. 2003) (en banc) (finding Missouri's requirement that capital jurors determine whether evidence in mitigation was sufficient to outweigh the evidence in aggravation before sentencing defendant to death was a factual finding properly made by jury). The *McLaughlin* court reasoned "all we know from the special interrogatory is what [the jury] did *not* find." *Id.* "[B]ecause the judge could not have known what the jury decided, he could not have relied upon it in imposing the death penalty, and so he must have made the factual finding himself." *Id.* This violated the Sixth Amendment. *Id.*

In *Woldt v. People*, the Supreme Court of Colorado found its state statute's requirement that the sentencing body decide "whether the mitigating factors outweighed the aggravating factors" was "fact-finding" that rendered the defendant eligible for a death sentence and must be made by a jury. 64 P.3d 256, 265-66 (Colo. 2003) (en banc). Additionally, while the Supreme Court of Nevada has considered weighing "*mostly* a question of mercy," the process is thereby regarded as retaining some factual inquiry. *Nunnery v. State*, 127 Nev. 749, 263 P.3d 235 (Nev. 2011) (emphasis added).

In Ohio, the jury only weighs aggravating circumstances against mitigating factors in order to arrive at an advisory jury recommendation regarding a death sentence. Even then, the jury does not make any factual findings that identify which mitigating factors, if any, the jury deemed proven. Nor does the jury make any factual finding about the weight the jury accorded each mitigating factor when the jury reached its advisory recommendation that the death penalty be imposed.

F. Conclusion, Part I.

Ohio's death penalty statute unconstitutionally permits a trial judge, rather than a trial jury, to determine all of the facts necessary to impose the death penalty. *Hurst*, 136 S.Ct. at 619. Like the statute found unconstitutional in *Hurst*, Ohio's death penalty statute requires only that the jury make a recommendation of a death sentence, in violation of the Sixth and Fourteenth Amendments to the United States Constitution. Accordingly, Movant was

prevented from having a fair trial in the sentencing phase of his case, and is entitled to a new mitigation phase trial pursuant to Crim. R. 33(A)(1).

III. Death Sentence Imposed in this Case Is Not Sustained by Sufficient Evidence and/or is Contrary to Law

As shown above, the Ohio death penalty statute violates the Sixth and Fourteenth Amendments to the United States Constitution because, in Ohio, a Jury's verdict in the mitigation phase is merely a recommendation. *Hurst*, 136 S.Ct. at 619. The death sentence in this case was imposed based upon a jury recommendation and independent fact finding by the trial court. Accordingly, the death sentence was imposed based upon insufficient factual findings (findings only made by a judge) and contrary to law. *Hurst*, 136 S.Ct. at 619. Movant is entitled to a new mitigation phase trial pursuant to Crim. R. 33(A)(4).

IV. The Death Sentence Imposed in this Case is the Result of an Error in Law

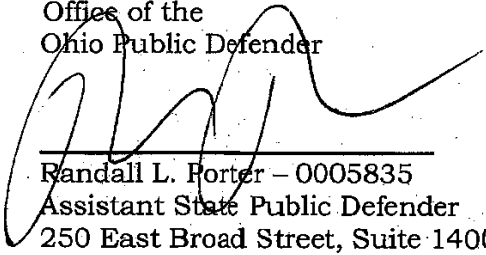
As shown above, the Ohio death penalty statute violates the Sixth and Fourteenth Amendments to the United States Constitution because, in Ohio, a jury's verdict in the mitigation phase is merely a recommendation. *Hurst*, 136 S.Ct. at 619. The death sentence in this case was imposed based upon a jury recommendation and independent fact finding by the trial court. Accordingly, the death sentence was imposed contrary to law. *Hurst*, 136 S.Ct. at 619. Movant is entitled to a new mitigation phase trial pursuant to Crim. R. 33(A)(5).

CONCLUSION

Movant was sentenced to death under a statutory scheme that violates the Sixth and Fourteenth Amendments of the United States Constitution because in Ohio, a Jury's verdict in the mitigation phase is merely a recommendation. *Hurst*, 136 S.Ct. at 619. Applying Ohio's unconstitutional death penalty statute to Movant's case constitutes an irregularity in the proceeding, or in any order or ruling of the court, or abuse of discretion by the court, because of which Movant was prevented from having a fair trial in the penalty phase in his case. The death sentence in this case was imposed based upon a jury recommendation and independent fact finding by the trial court. Accordingly, the death sentence was imposed contrary to law and is the result of an error of law. *Hurst*, 136 S.Ct. at 619. Movant is entitled to a new penalty phase trial pursuant to Crim. R. 33(A)(1),(4) and (5).

Respectfully submitted,

Office of the
Ohio Public Defender

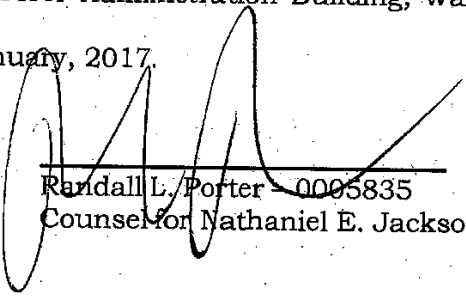


Randall L. Porter – 0005835
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Randall.Porter@opd.ohio.gov

Counsel for Nathaniel E. Jackson

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Nathaniel Jackson's Motion For A New Mitigation Trial Pursuant To Criminal Rule 33 And *Hurst v. Florida* was served by U.S. mail to Luwayne Annos, Assistant Prosecuting Attorneys, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 11th day of January, 2017.



Randall L. Porter - 0005835
Counsel for Nathaniel E. Jackson

Exhibit A

§ 2929.02.3

CRIMES—PROCEDURE

344

ATTACHMENT 1:

**Defendant's Motion for a
New Mitigation Trial
R.C. § 2929.03 (1986)**

§ 2929.03 Imposing sentence for a capital offense.

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose a sentence of life imprisonment with

PENALTIES AND SENTENCING

§ 2020.03

parole eligibility after serving twenty years of imprisonment on the offender.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 [2929.02.3] of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard, which shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but such instruction shall not mention the penalty which may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code, the trial court shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be death, life imprisonment with parole eligibility after serving twenty full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment, shall be determined pursuant to divisions (D) and (E) of this section, and shall be determined by one of the following:

(a) By the panel of three judges that tried the offender upon his waiver of the right to trial by jury;

(b) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated

murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or his counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, he is subject to cross-examination only if he consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to divi-

sion (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to life imprisonment with parole eligibility after serving twenty full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

If the trial jury recommends that the offender be sentenced to life imprisonment with parole eligibility after serving twenty full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment, the court shall impose the sentence recommended by the jury upon the offender. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

- (a) Life imprisonment with parole eligibility after serving twenty full years of imprisonment;
- (b) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(E) If the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

- (1) Life imprisonment with parole eligibility after

serving twenty full years of imprisonment;

- (2) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. The court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(G) Whenever the court or a panel of three judges imposes sentence of death, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

HISTORY: 134 v H 511 (EF 1-1-74); 135 v S 1, EF 10-19-81.

Committee Comment to H 511

This section specifies the procedure to be followed in determining whether the sentence for aggravated murder is to be life imprisonment or death.

The death penalty is precluded unless the indictment contains a specification of one or more of the aggravating circumstances listed in section 2929.04. In the absence of such specifications, life imprisonment must be imposed. If the indictment specifies an aggravating circumstance, it must be proved beyond a reasonable doubt, and the jury must return separate verdicts on the charge and specification. If the verdict is guilty of the charge but not guilty of the specification, the penalty is life imprisonment.

If the verdict is guilty of both the charge and the specification, the jury is discharged and the trial begins a second phase designed to determine the presence or absence of one or more mitigating circumstances. If one of the three mitigating factors listed in section 2929.04 is established by a preponderance of the evidence, the penalty is life imprisonment. If none of such factors is established, the penalty is death. The procedure is essentially the same in the first phase of an aggravated murder trial whether the case is tried by a jury or by a three-judge panel on a waiver of a jury. The burden of proof still rests on the state, the same rules of evidence apply, the specification must be proved beyond a

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

-VS-

NATHANIEL JACKSON
Defendant.

Case No 2001-CR-794

JUDGE RONALD J. RICE

MOTION TO EXTEND TIME TO
FILE RESPONSE TO
DEFENDANT' MOTION FOR
LEAVE

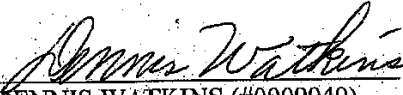
Now comes the Plaintiff, the State of Ohio ("State"), by and through undersigned counsel, who move this Court for an extension of time to file its response to Defendant Nathaniel Jackson's ("Defendant") Motion for Leave to File a Motion for New Mitigation Trial Tied in the Court January 13, 2017. By the State's calculation, its response is due January 28, 2017. The State seeks a 30-day extension to February 21, 2017 (accounting for a legal holiday), to file said response.

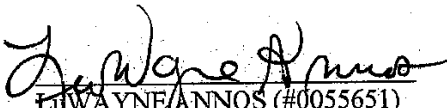
This extension is not sought for purposes of delay, but to fully and fairly address Defendant's 18-page motion on this very serious matter, to wit, a capital sentencing proceeding. A single week with an intervening legal holiday is simply insufficient time to respond adequately to this motion. Therefore, the State requests that this Court set the due date for State's response at February 21, 2017.



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Respectfully submitted by:


DENNIS WATKINS (#0009949)
Prosecuting Attorney

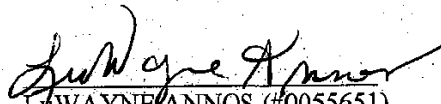

LU WAYNE ANNOS (#0055651)
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160 High St. 4th Floor
Warren, Ohio 44481

Telephone: (330) 675-2426
Fax: (330) 675-2431

COUNSEL FOR PLAINTIFF
THE STATE OF OHIO

PROOF OF SERVICE

I do hereby certify that a copy of the foregoing motion was sent by ordinary U.S. Mail to Atty. Randall L. Porter (#0005835), Assistant Public Defender, 250 E. Broad St., Suite 1400, Columbus, Ohio 43266, Counsel for Defendant Nathaniel Jackson, on this 17th Day of January 2017.


LU WAYNE ANNOS (#0055651)
Assistant Prosecuting Attorney

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

State of Ohio,	)	Case No. 2001 CR 794
)	
Plaintiff,	)	Judge Ronald J. Rice
)	
-vs-	)	JUDGMENT ENTRY
)	
Nathaniel Jackson,)	
)	
Defendant.)	

This cause is before the Court on the Plaintiff's Motion to Extend Time to File Response to Defendant's Motion for Leave filed on January 17, 2017. Upon review, the Court finds Plaintiff's Motion is well taken.

Plaintiff is hereby granted an additional 30 days, until February 21, 2017, to file a response.

It is so ordered.



Judge Ronald J. Rice

Date: 01-18-2017

FILED
COURT OF COMMON PLEAS
JAN 18 2017
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK


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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

-vs-

NATHANIEL JACKSON
Defendant.

Case No 2001-CR-794

JUDGE RONALD J. RICE

**STATE'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR
LEAVE TO FILE A MOTION FOR A NEW MITIGATION TRIAL**

Now comes the Plaintiff, State of Ohio ("State") by and through the undersigned counsel, who moves this Court to **DENY** without hearing Defendant Nathaniel Jackson's ("Defendant") Motion for Leave to File a Motion for New Mitigation Trial filed in this Court January 13, 2017. Defendant is 14 years late with this "motion" which – even when viewed in a light most favorable to him – is completely baseless and unsupported by any Ohio authority whatsoever.

LAW AND ARGUMENT

Factual Background

To recite just a brief history of this case, Defendant in 2002 was convicted and sentenced to death for the December 12, 2001, home invasion and shooting death of area businessman Robert Fingerhut. His guilt in this aggravated murder has never been an issue. Defendant was having an affair with Mr. Fingerhut's ex-wife, Donna Roberts. The pair plotted for three months through a series of penitentiary phone calls and

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handwritten letters to shoot and kill Mr. Fingerhut. In exchange for his services as the hit man, Roberts promised Defendant a portion of Mr. Fingerhut's life insurance proceeds, a home in the Howland Township suburbs, a luxury automobile and sex.

With an overwhelming amount of evidence, including the prosecutorial treasure trove of recorded conspiratorial phone calls and the letters, Defendant's jury convicted him of two counts of aggravated murder in violation of R.C. 2903.01(A) and (B) for killing Mr. Fingerhut. Both murder counts carried two felony-murder death-penalty specifications: murder during an aggravated burglary and during an aggravated robbery. R.C. 2929.04(A)(7) as well as separate counts of aggravated burglary and aggravated robbery with a firearm specification on each count. For purposes of Defendant's motion, it is important to note that the jury, and not the judge, found Defendant guilty of the aggravating specifications, and unanimously recommended a sentence of death. The court imposed the death sentence. In 2003, Roberts was also convicted and sentenced to death for her role in her ex-husband's murder in Trumbull County Case No. 2001-CR-793.

On January 4, 2006, the Ohio Supreme Court unanimously affirmed Defendant's conviction and sentence. However, on August 2, 2006, the Ohio Supreme Court affirmed Roberts' conviction; it remanded her case back to the common pleas court for a resentencing hearing because the trial judge failed to afford Roberts her rights under Crim. R. 32(A)(1) and because someone from the prosecutor's office typed her sentencing entry. *State v. Roberts*, 110 Ohio St.3d 71, 2006 -Ohio- 3665, 850 N.E.2d 1168. Adopting a what's- good- for- the- goose-is-good-for-the-gander legal approach, Defendant began to barrage the common pleas court with pleadings aimed at procuring

not just a new sentencing hearing like *Roberts*, but a new trial as well. Though his pleadings were all denied by the trial court, the Eleventh District Court of Appeals on October 15, 2010, overturned the common pleas court's decision denying Defendant's motion for new trial and/or sentencing. The reviewing court ordered the trial court, then presided over by trial judge, John Stuard, as follows: "Based on the Supreme Court of Ohio's holding in *Roberts*, appellant is entitled to the same relief afforded to his co-defendant. Thus, the trial judge must personally review and evaluate the appropriateness of the death penalty, prepare an entirely new sentencing entry as required by R.C. 2929.03(F), and conduct whatever other proceedings are required by law and consistent with this opinion." *State v. Jackson*, 190 Ohio App.3d 319, 2010-Ohio-5054, 941 N.E.2d 1221, ¶ 29 (11th Dist., 2010).

Judge Stuard complied with that order and re-imposed the death sentence. On August 24, 2016, the Ohio Supreme Court once again on August 24, 2016, affirmed Defendant's death sentence. *State v. Jackson*, ---N.E. 3d --, 2016-Ohio-5488, ¶ 115 (Ohio), *reconsideration denied*, 147 Ohio St.3d 1439, 2016-Ohio-7677, 63 N.E.3d 157, ¶ 115 (2016). The U.S. Supreme Court decided *Hurst v. Florida*, 577 U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), the case upon which Defendant bases his motion for leave, on January 12, 2016. This was after the Defendant's brief on the resentencing hearing was filed in the Ohio Supreme Court but before oral arguments. Defendant filed the instant motion for leave, accompanied by a memorandum in support of his motion for new trial on January 13, 2017. For the reasons set forth below, the State opposes Defendant's motion for leave and submits his proposed motion for new trial affixed to his motion for leave is destined for certain denial under Ohio law.

New Sentencing Under Crim. R. 33: Inapplicable Anomaly to Defendant

In his motion for leave, Defendant attempts to bootstrap Crim. R. 33 to trigger a new mitigation hearing arguing that the U.S. Supreme Court's now year-old decision in *Hurst* entitles him to a new mitigation hearing. Very simply, Crim. R. 33, which is clearly labeled "New trial," not new "mitigation trial," is not designed for the relief sought by the Defendant, to wit, a "re-do" of his penalty phase in a death penalty trial. As will be discussed *infra*, the Ohio Supreme Court has already decided that *Hurst* will have absolutely no impact on Ohio death cases because the *Hurst* court found errors in Florida's death penalty provisions which simply do not exist now and did not exist in Ohio when the court sentenced Defendant to death. From that standpoint alone, Defendant's motion for leave is a complete exercise in futility, and an unvarnished delay tactic aimed at stalling his July 15, 2020, scheduled execution date. That being so stated, the State will first address the procedural hurdles encountered in the context of a Crim. R. 33 motion which Jackson cannot clear.

Significantly, the Eleventh District Court of Appeals, which is controlling authority upon this Court, ruled in another Trumbull County death penalty case that Crim. R. 33 cannot be applied to cases wherein a new sentencing hearing – rather than a new trial – is sought. "There is no provision in the Ohio Criminal Rules that provides for a new sentencing hearing. Crim.R. 33, upon which Mr. Davie relies, only applies to motions for a new trial. A 'motion for a new sentencing hearing' is an anomaly and does not fall within the purview of Crim .R. 33. Therefore, Mr. Davie's reliance on Crim.R. 33

is misplaced.” *State v. Davie*, 11th Dist. No. 2007-T-6940, 2007-Ohio-6940, ¶ 8.¹

Defendant does not even acknowledge the *Davie* decision in his motion for leave, let alone explain why an untimely Crim. R. 33 was inapplicable to *Davie* yet applicable to him. Bottom line: He seeks a relief Crim. R. 33 simply does not provide.

Second, while Defendant tacitly admits he is late with this Crim. R. 33 motion, he neglects to remind the court just *how* late. Defendant was originally sentenced to death for the home-invasion, premeditated murder of area businessman Robert Fingerhut on December 9, 2002. The jury issued a verdict recommending death on November 18, 2002. He was resentenced to death August 14, 2012. Crim. R. 33 does not provide for an indefinite time frame in which to file a motion for new trial. In fact, the rule sets forth very specific deadlines for motions for new trial:

(B) Motion for New Trial; Form, Time. Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein. Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

Based on the jury’s verdict recommending death, his motion for “new mitigation trial”

¹ In the interest of full disclosure, the Eleventh District went on to distinguish *Davie* in *State v. Jackson*, 11th Dist. No. 2009-T-0050, 2010-Ohio-5054, but only because the trial court admitted delegating the typing of Defendant’s sentencing entry to the prosecutor’s office. Defendant was subsequently resentenced to death as a result of *State v. Jackson*, 11th Dist. No. 2009-T-0050, 2010-Ohio-5054. The re-imposed death sentence was affirmed by the Ohio Supreme Court in *State v. Jackson*, --- N.E.3d --- 2016 WL 448593, 2016 -Ohio- 5488, reconsideration denied 147 Ohio St. 3d 1439 (2016).

would have been due in this Court, at the latest, March 18, 2003. Therefore, Defendant's motion is roughly 14 years too late. As will be discussed *infra*, he does not demonstrate by any level of proof that he was "unavoidably prevented" from "discovering" the error raised in *Hurst* before January 2017.

Crim. R. 33 Incorrect Pleading

Furthermore, even if this Court brushes aside the timeliness issue – something it has no authority to do – Crim R. 33 provides no relief for him because even if this Court grants him leave to file, he fails to articulate any legitimate or legally sustainable grounds for relief:

Rule 33. New Trial (A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights: (1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial; (2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) That the verdict is not sustained by sufficient evidence or is contrary to law. If the evidence shows the defendant is not guilty of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified; (5) Error of law occurring at the trial; (6) When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

The State submits that a U.S. Supreme Court decision, which finds flaws in a Florida's – not Ohio's – death penalty scheme does not fall into any of these categories.

At page 1 of his motion for leave, Defendant lists three proposed grounds:

irregularity in the proceedings, insufficient evidence, and error of law. Even if this Court grants leave, a "*Hurst* error" will simply not attach. There was no irregularity in the proceeding. Defendant's convictions and death sentence has been affirmed not once but *twice* by the Ohio Supreme Court. *State v. Jackson*, --N.E. 3d--, 2016-Ohio-5488; *State v. Jackson* 107 Ohio St.3d 300, 839 N.E.2d 362, 2006 -Ohio- 1. He was not denied a fair trial when an Ohio jury and judge properly applied Ohio law to his Ohio aggravated murder case and sent him to Ohio's death row. Since Crim. 33 (A)(4) addresses the sufficiency of the guilty verdict, and not the sufficiency of the sentencing verdict, his "sufficiency" ground does not get off the ground. Finally, the court made no error in law in sentencing him to death after the jury convicted him of two aggravating circumstances and found him to be death eligible. The error of law in the *Hurst* case was that a judge, not a jury, found *Hurst* guilty of the aggravated circumstances, and then sentenced *Hurst* to death with a less than unanimous recommendation of death. That did not happen here, so even in light of *Hurst*, Defendant will not be able to demonstrate an error of law.

Not unavoidably prevented from discovery.

Defendant hangs his hopes for a grant of leave to file on a woefully time-barred and illusory hook. First, Defendant cites absolutely no authority from any court, let alone an Ohio court, to suggest that a Supreme Court decision rendered fifteen years after a jury verdict constitutes "newly discovered evidence" as contemplated by Crim. R. 33(B). Black's Law Dictionary, 7th Edition defines "evidence" generally as "[s]omething (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact." A U.S. Supreme Court opinion falls into none of these categories. There is nothing in *Hurst* that would disprove that Defendant plotted with

Donna Roberts to kill Robert Fingerhut, that he did so during an aggravated burglary of Mr. Fingerhut's private residence, that he stole and abandoned Mr. Fingerhut's automobile to facilitate his getaway, and that a jury unanimously convicted him of two aggravating circumstances (while committing or attempting to commit aggravated burglary and aggravated robbery).

More specifically, Black's Law Dictionary, 7th Edition defines "newly discovered evidence" as "[e]vidence existing at the time of a motion or trial but then unknown to a party, who, upon later discovering it, may assert it as grounds for reconsideration or a new trial." By Defendant's own admission, there was no such "evidence" as *Hurst* was not even decided until January 12, 2016. Thus, *Hurst* cannot be said to have been "existing at the time of a motion or trial."

When a criminal defendant fails to unearth his "newly discovered evidence" within 120 days, Ohio Law is clear, the onus is on the defendant to seek leave and to prove he was "unavoidably prevented" from discovering such evidence. " 'To obtain such leave, the defendant must demonstrate by clear and convincing proof that he or she was unavoidably prevented from discovering the evidence within the 120 days.' *** A party is 'unavoidably prevented' from filing a motion for a new trial if the party had no knowledge of the existence of the ground supporting the motion and could not have learned of that existence within the time prescribed for filing the motion in the exercise of reasonable diligence. *State v. Walden*, 19 Ohio App.3d 141, 145-146, 483 N.E.2d 859 (10th Dist.1984)." *State v. Waddy*, 10th Dist. No. 15AP-397, 2016-Ohio-4911, 2016 WL 3667794, ¶18 quoting *State v. Hoover-Moore*, 2015-Ohio-4863, 50 N.E.3d 1010, at ¶ 13.

“Clear and convincing proof that the defendant was ‘unavoidably prevented’ from filing ‘requires more than a mere allegation that a defendant has been unavoidably prevented from discovering the evidence he seeks to introduce as support for a new trial.’” *State v. Lee*, 10th Dist. Franklin No. 05AP-229, 2005-Ohio-6374, 2005 WL 3220245, ¶ 9. The requirement of clear and convincing evidence puts the burden on the defendant to prove he was unavoidably prevented from discovering the evidence in a timely manner. *State v. Rodriguez-Baron*, 7th Dist. Mahoning No. 12-MA-44, 2012-Ohio-5360, 2012 WL 5863613, ¶ 11.

At page 3 of his motion, Defendant argues that because *Hurst* did not exist in 2002 he could not have discovered it, nor could he have anticipated it, therefore he was unavoidably prevented from discovering it. The State posits the following counter argument: how is one prevented from discovering nothing? If there is nothing there to discover, there can be no prevention. But in reality, pursuant to *Waddy*, *Walden* and *Hoover-Moore*, Defendant had full knowledge in 2002 of how Ohio’s death penalty scheme worked to determine death eligibility, so he cannot now argue that he was unavoidably prevented from discovering something printed in black and white and readily available for discovery in R.C. 2929.03 and 2929.04.

Crim. R. 33: The Wrong Vehicle for Relief

Moreover, Defendant has simply selected an incorrect vehicle to secure the relief he seeks. Without question, Defendant is arguing a constitutional violation in his quest to “a new penalty phase trial.” Ohio Supreme court authority has been clear on this point for 20 years. A defendant’s post-appeal, constitutional attack on a conviction or sentence can only flow through a petition for postconviction relief, not a Crim. R. 33 motion. “Where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a

petition for postconviction relief as defined in R.C. 2953.21.” *State v. Reynolds*, 79 Ohio St.3d 158, 1997-Ohio-304, 679 N.E.2d 1131 (1997), syllabus. In *Reynolds*, a defendant filed what he captioned a “motion to correct or vacate sentence” four years after his conviction and sentence had been affirmed for aggravated robbery and a firearm specification. He argued a constitutional violation because of a “new” Ohio Supreme Court ruling which mandated that the prosecution prove the operability of the firearm. *Id.* at 159.

The *Reynolds* court held that regardless of its labeling, Ohio courts must construe such motions post-appellate pleadings as postconviction petitions filed pursuant to R.C. 2953.21(A)(2). “Reynolds’s Motion to Correct or Vacate Sentence, despite its caption, meets the definition of a motion for postconviction relief set forth in R.C. 2953.21(A)(1), because it is a motion that was (1) filed subsequent to Reynolds’s direct appeal, (2) claimed a denial of constitutional rights, (3) sought to render the judgment void, and (4) asked for vacation of the judgment and sentence. Accordingly, we find that Reynolds’s Motion to Correct or Vacate Sentence is a petition for postconviction relief as defined in R.C. 2953.21.” *Id.* at 160. As such, this Court must construe Defendant’s “motion” as a postconviction petition.

The Eleventh District has agreed with this logic. “In essence, Mr. Davie is arguing an irregularity in the court’s sentencing opinion. Thus, his motion must be construed as a petition for postconviction relief since ‘a criminal defendant who files a motion to vacate or correct his or her sentence on the ground that his or her constitutional rights have been violated necessarily embraces the postconviction relief statutes: ‘Where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21.’ *State v. Foti*, 11th Dist. No.2006-L-138, 2007-

Ohio-887, at ¶ 12-13, citing, *State v. Reynolds* (1997), 79 Ohio St.3d 158, 679 N.E.2d 1131, syllabus.” *State v. Davie*, 2007-Ohio-6940, ¶ 9 (11th Dist. Trumbull).

Based on the authority of both the Ohio Supreme Court and the Eleventh District, Defendant’s “motion” must be construed as a postconviction petition.

Time-Barred

In addition to the untimeliness already discussed with respect to Defendant’s motion under Crim. R. 33, his motion is even more time-barred when read in the context of a petition for postconviction relief. Under the former R.C. 2953.21(A)(2), a defendant’s petition was due in the trial court 180 days after the filing of the record.² The record for Defendant’s *second* direct appeal was filed in the Ohio Supreme Court January 2, 2013. (Ohio Supreme Court No. 2012-1644). While Defendant filed a postconviction petition in the trial court June 28, 2013, he did not raise the constitutionality of Ohio’s death penalty scheme in that petition. If the defendant files outside those time constraints the trial court may not entertain a postconviction petition unless: 1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner’s situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error***at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

(2) The petitioner *** was sentenced to death, establish[es], by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

² Under the current statute, the petitioner has 365 days after the record is filed to file a postconviction petition.

R.C. 2953.23(A)(1)&(2).

Defendant does not meet any of these exceptions for an out-of-time postconviction petition. The Court should note that the lone piece of evidence *de hors* the record is an affidavit from Defendant's counsel of the State Public Defender's Office which attempts to excuse his delayed filing by stating "*Hurst* is a complex decision, has generated considerable discussion and debate about the parameters of its holding, and takes time to digest and understand." Defendant waited a full 367 days after *Hurst* to file this motion for leave. No digestive process takes that long. With due diligence, a properly drafted R.C. 2953.21 petition could have been excreted in a more expeditious fashion.

For reasons previously discussed, he was not unavoidably prevented from discovering his *Hurst* claim prior to last month. *Hurst* does not apply a new federal or state right to Ohio death row inmates. It overturned a portion of Florida's death penalty scheme, but has absolutely no impact on the Ohio plan. Even in light of *Hurst*, a reasonable factfinder would still find petitioner eligible for the death sentence. Defendant does not even argue his actual innocence as to the aggravating circumstances which are the basis for his death sentence. Therefore, because Defendant's mislabeled motion does not begin to comply with R.C. 2953.23 he is obviously time-barred from raising his "*Hurst*" claim.

Res Judicata Barred

Certainly, Defendant was in no way prohibited from bringing a "*Hurst* claim" prior to the Supreme Court's decision. Lorraine has had fourteen years of State appeals and plethora of post-conviction motions to promote the bogus argument that in Ohio a judge and not a jury makes the factual determinations necessary to impose a sentence of death. This is a total falsehood, but it's the central holding in *Hurst* which he now seeks to exploit.

As discussed previously, Defendant's pleading, in actuality, is an R.C. 2953.21 petition in Crim. R. 33 clothing. As a result, the doctrine of res judicata bars him from raising "Hurst" issue at this time. "It is well-established that the doctrine of res judicata is applicable to postconviction relief proceedings. In *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), the Supreme Court of Ohio held: 'Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except on appeal from that judgment, any defense or claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in the judgment of conviction or on appeal from that judgment.' Id. at 180, 226 N.E.2d 104. Additionally, in *State v. Cole* (1982), 2 Ohio St.3d 112, 443 N.E.2d 169, the Supreme Court of Ohio specifically indicated that res judicata is a proper basis to dismiss a postconviction relief petition where the issue sought to be presented could have been raised at trial or in a direct appeal, and where 'such issue could fairly have been determined without resort to evidence *dehors* the record.' Id. at paragraph one of the syllabus." *State v. Jackson*, 11th Dist. No. 2004-T-0089, 2006-Ohio-2651, ¶¶ 55-57 (11th Dist. Trumbull), *cause dismissed*, 110 Ohio St.3d 1407, 2006-Ohio-3306, 850 N.E.2d 69, ¶¶ 55-57 (2006)

At least one Ohio appellate court has held that the doctrine of res judicata bars leave to file a motion for new trial when the defendant seeks to promote a claim in a Crim. R. 33 motion that could have been raised in a direct appeal. *State v. Grinnell*, 10 Dist. No. 09AP-1048, 2010-Ohio-3028, ¶26, quoting *State v. Phillips*, 9th Dist. No. 20692, 2002-Ohio-823. In the civil realm, a motion pursuant to Civ. R.60(B) - which like Crim. R. 33(A)(6)- addresses newly discovered evidence, cannot be used as a substitute for a direct appeal. "It is well-settled that a party may not use a Civ.R. 60(B) motion as a substitute for a timely appeal." *Doe v. Trumbull Cty. Children*

Services Bd. (1986), 28 Ohio St.3d 128, 502 N.E.2d 605, paragraph two of the syllabus.

Moreover, “***the doctrine of *res judicata* would be abrogated if every decision could be relitigated on the ground that it is erroneous, and there would be [no] stability of decision, or no end to litigation.” *Belden v. Neff-Perkins Co.*, 11th Dist. Lake Nos. 11-270, 11-135, 1987 WL 5436, *4.

The lack of finality and the endless stream of litigation is the obvious end game here. However, the doctrine of *res judicata* applies and Defendant’s motion for leave can be rejected on that basis alone. Defendant cannot overcome the procedural hurdles firmly in place to block his motion for leave. He was not “unavoidably prevented” from discovering the legal authority for making him death eligible since it was obvious from the face of the Ohio Revised Code at the time of his conviction and sentencing. Finally, his motion is time-barred whether construed as a Crim. R. 33 motion for new trial or a R.C. 2953.21 petition for postconviction relief. For these procedural reasons, the Court must deny relief.

***Hurst* is inapplicable to Ohio Death Penalty Cases**

Though the State views the procedural issues wholly dispositive of Defendant’s motion for leave, the Court should be aware of recent Ohio authority which would precluded the relief sought by Defendant. Even if this Court completely ignores the procedural bars to Defendant’s motion and allows him to file this untimely, *res judicata* barred, legally unsupported motion for a new mitigation hearing, it will all be for naught. The Ohio Supreme Court held just weeks after the U.S. Supreme Court released *Hurst* that the case has no bearing whatsoever on Ohio death cases. The constitutional error identified in *Hurst* - that a judge rather than jury determines guilt on the aggravating circumstances - is not a component in Ohio’s capital sentencing process.

“In Ohio, a capital case does not proceed to the sentencing phase until *after* the fact-

finder has found a defendant guilty of one or more aggravating circumstances. See R.C. 2929.03(D); R.C. 2929.04(B) and (C); *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, 23 N.E.3d 1096, ¶ 147. Because the determination of guilt of an aggravating circumstance renders the defendant eligible for a capital sentence, it is not possible to make a factual finding during the sentencing phase that will expose a defendant to greater punishment. Moreover, in Ohio, if a defendant is tried by a jury, then the judge cannot impose a sentence of death unless the jury has entered a unanimous verdict for a death sentence. R.C. 2929.03(D)(2). In Ohio, a capital case does not proceed to the sentencing phase until *after* the fact-finder has found a defendant guilty of one or more aggravating circumstances. See R.C. 2929.03(D); R.C. 2929.04(B) and (C); *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, 23 N.E.3d 1096, ¶ 147. Because the determination of guilt of an aggravating circumstance renders the defendant eligible for a capital sentence, it is not possible to make a factual finding during the sentencing phase that will expose a defendant to greater punishment. Moreover, in Ohio, if a defendant is tried by a jury, then the judge cannot impose a sentence of death unless the jury has entered a unanimous verdict for a death sentence. R.C. 2929.03(D)(2).” (Italics original) *State v. Belton*, -- N.E. 3d ---2016-Ohio-1581, ¶ 59 (Ohio), *reconsideration denied*, 147 Ohio St.3d 1440, 2016-Ohio-7681.

Since the Ohio Supreme Court announced *Belton*, to which Defendant fails to cite in his motion, Ohio’s Third Appellate District conducted a far more in depth analysis of why *Hurst* simply does not apply to Ohio death sentences. In so doing, the court overturned a Marion County Common Pleas judge used who *Hurst* to declare Ohio’s death penalty scheme unconstitutional and vacated a death sentence:

“Florida’s statutory scheme permitted the trial judge to conduct a separate sentencing

hearing, known as a *Spencer* hearing, to hear and consider evidence not heard by the jury. *See Spencer v. State*, 615 So.2d 688, 690691 (Fla.1993); *Engle v. State*, 438 So.2d 803, 813 (Fla.1983). In Ohio, there is no separate hearing or opportunity to present any additional evidence—that is, the trial court is not permitted to consider any evidence not presented to the jury. R.C. 2929.03(D) (1981) (current version at R.C. 2929.03(D) (2008)). Likewise in stark contrast to Ohio's statutory scheme, Florida's death-penalty statute permitted the trial court to impose a death sentence when the jury recommended a life-imprisonment sentence. *See Williams v. State*, 967 So.2d 735, 751 (Fla.2007); *Hurst* at 625 (Alito, J. dissenting), citing *Tedder*, 322 So.2d at 910. Indeed, Florida's statute specifically referred to the jury's sentence as “advisory” and read, ‘Notwithstanding the recommendation of a majority of the jury * * *.’ *See Fla. Stat.* 921.141(2), (3) (2010) (current version at Fla. Stat. 921.141(2), (3) (2016)). Under Ohio's death-penalty statute, the jury's aggravating-circumstance finding is binding on the trial judge, and the trial judge cannot expose the defendant to a greater penalty than authorized by the jury verdict. *See State v. Cooley*, 46 Ohio St.3d 20, 544 N.E.2d 895 (1989), paragraph three of the syllabus (‘Only the aggravating circumstances related to a given count may be considered in assessing the penalty for that count.’), *superseded by constitutional amendment on other grounds*, *State v. Smith*, 80 Ohio St.3d 89, 684 N.E.2d 668 (1997); R.C. 2929.03(D)(2) (1981) (current version at R.C. 2929.43(D)(2)(2008)).

“The stark differences between Ohio's and Florida's death-penalty statutes are outcome-determinative for [appellant's] challenge to Ohio's death-penalty statute under *Hurst*. *See Hurst* at 624. The trial court in this case ignored the most important feature that renders Ohio's death-penalty statute constitutional under the Sixth Amendment through *Apprendi* [*v. New Jersey*, 503 U.S. 466 (2000)], *Ring* [*v. Arizona*, 536 U.S. 584(2002)] and *Hurst*—that the jury, not the judge,

determines beyond a reasonable doubt the existence of an aggravating circumstance—the feature that subjects a defendant to the possibility of death as a sentence. Accordingly, we hold that the trial court erred in concluding that Ohio's death-penalty statute in effect in 1993 is unconstitutional under *Hurst*."

State v. Mason, 3rd Dist. No. 9-16-24 2016-Ohio-8400, ¶¶ 28-29.

While *Mason* is not controlling upon this Court, *Belton* most certainly is. The grant of leave in the instant matter will place this Court face to face with legal authority it cannot ignore: *Hurst* has not impact on Ohio's capital sentencing scheme.

***Petro* insurmountable**

In his proposed motion for new trial, Defendant omits all reference to the controlling case in Ohio regarding Crim. R. 33 motions. It is long-settled Ohio law that in order to obtain a new trial based upon newly discovered evidence – which again the State argues *Hurst* is not – a defendant must show that "the new evidence: (1) discloses a strong probability that it will change the result if a new trial is granted; (2) was discovered after the trial; (3) is such as could not in the exercise of due diligence have been discovered before the trial; (4) is material to the issues; (5) is not merely cumulative to the former evidence; and (6) does not merely impeach or contradict the former evidence." *State v. Petro* 148 Ohio St. 505, 76 N.E.2d 370(1947), syllabus.

Defendant will not be able to meet any of these criteria if this Court grants leave to file. Defendant has been sentenced to death twice by the same common pleas judge and his sentence has been affirmed twice by the Ohio Supreme Court. As a result there is NO probability that the outcome of his sentence would change even if a new jury was empaneled to consider his sentence. As discussed *infra*, Ohio's sentencing methods were not discovered after the trial. Defendant with due diligence could have raised his complaint in pre-trial pleadings, appellate

briefing and post-conviction petitions. He chose not to. *Hurst* is not material to whether or not Defendant shot and killed an innocent man in his own home during the course of an aggravated burglary and aggravated robbery. *Hurst* has no bearing on the evidence whatsoever. As a result, should this Court grant leave, it will prove to be a waste of judicial resources for consideration of a guaranteed losing argument.

***Kirkland* of no importance**

Finally, at page 14 of his proposed motion for new trial, Defendant references the Ohio Supreme Court's post-*Belton* grant of a new mitigation hearing in *State v. Kirkland*, 2010-0854, 2016-Ohio-2807 (05/04/2016 Case Announcements). This Court should be aware that this remand from the Ohio Supreme Court to the Hamilton County Court of Common Pleas was done without explanation by the court in response to a S.Ct. Prac. R. 18.02 motion for reconsideration filed by the State. The same day, the court *denied* S.Ct. Prac. R. 4.01 motions in four other death penalty cases where the inmates sought relief through *Hurst*. *State v. Sheppard* and *State v. Fears*, 147 Ohio St. 3d 1439 (2016) ; *State v. Myers* and *State v. Gapen* 147 Ohio St. 3d 1440 (2016). As in *Kirkland*, the court gave no explanation for denying these motions. Also on the same day, the court denied reconsideration in *Belton*, 147 Ohio St. 3d 1440 (2016). Therefore, *Kirkland* is no signal from the Ohio Supreme Court that *Hurst* should be read favorably to Defendant's plea for a new mitigation hearing.


CONCLUSION

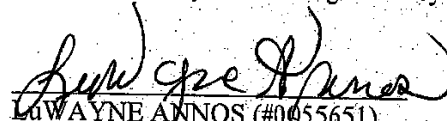
Defendant fails to offer a credible or persuasive explanation why it took him 367 days to file either Crim. R. 33 motion or a R.C. 2953.21 postconviction petition to argue that *Hurst* was applicable to him. The State asks this Court to find he was NOT unavoidably prevented from discovering how Ohio death penalty proceedings work. As these proceedings were obvious from

the face of the Ohio Revised Code, Defendant could have argued their alleged unconstitutionality well before the *Hurst* decision. Further, the State urges this Court to find that *Hurst*, or any other appellate opinion, does not comprise "evidence" as contemplated by Crim. R.33. In addition to having no new evidence, Defendant seeks to deploy a Crim. R. 33 motion to perform the function of a postconviction petition. When construed as such, there is ample Ohio case law which says his *Hurst* claim is *res judicata* barred. Even if leave to file is granted, Defendant's claim will fall flat in the face of *Petro*. Alternatively, assuming the Court would grant leave to file his untimely Crim.R. 33 motion, said motion would be subject to dismissal as a matter of law without an evidentiary hearing. *Petro, supra*.

The State urges this Court to deny, without hearing, Defendant's motion for leave to file a time barred motion for new mitigation hearing.

Respectfully submitted,


DENNIS WATKINS (#0009949)
Trumbull County Prosecuting Attorney

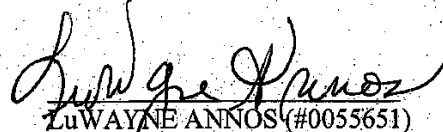

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COUNSEL FOR PLAINTIFF,
STATE OF OHIO

PROOF OF SERVICE

I do hereby certify that a copy of the foregoing response was sent by ordinary U.S. Mail to Randall L. Porter (#0005835), Counsel for Nathaniel Jackson, Assistant St. Public Defender, 250 E. Broad St., Suite 1400, Columbus, Ohio, 43215-9308 on this 21st Day of February, 2017.


LuWAYNE ANNOS (#0055651)
Assistant Prosecuting Attorney

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,

:

Plaintiff,

: **Case No. 01-CR-794**

-vs-

:

NATHANIEL JACKSON,

: **Judge Ronald J. Rice**

Defendant.

:

**Nathaniel Jackson's Reply in Support of His Motion for a New Mitigation
Trial Pursuant to Criminal Rule 33 and *Hurst v. Florida***

On January 13, 2017, Nathaniel Jackson, pursuant to Criminal Rule 33 and the United States Supreme Court decision in *Hurst v. Florida*, __ U.S. __, 136 S. Ct. 616 (2016), moved this Court for leave to file a Motion for a new mitigation trial ("Motion"). He attached thereto his motion for a new mitigation trial. The State filed its response on February 16, 2017 ("State's Response").

Jackson "stands pat" on the arguments he raised in his motion for leave to file and his motion for a new mitigation trial. He files this reply for the limited purpose of responding to any arguments raised by the State and not already sufficiently addressed in his motions.

I. Jackson Properly Raised the *Hurst* Claim in a Motion for a New Trial.

The State initially argues that this case is not properly before this Court because Jackson raised his *Hurst* claim in a new trial motion as opposed to a post-conviction petition. (State's Response, pp. 4-5). The State relies on the



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Eleventh Appellate District Court's decision in *State v. Davie*, 11th Dist. No. 2007-T-6940, 2007-Ohio-6940 (*Id.* at p. 5). The Court therein held that a death sentenced individual could not employ a new trial motion filed pursuant to Crim. R. 33 to seek a new sentencing proceeding. *Id.* at ¶ 8.

However, the Eleventh Appellate District subsequently ruled otherwise with respect to the propriety of seeking sentencing relief in a new trial motion. *State v. Jackson*, 190 Ohio App.3d 319, 2010-Ohio-5054, 941 N.E.2d 1221. In *Jackson* the defendant filed a motion for a new trial or sentencing hearing because the trial court had improperly relegated to the prosecutor the duty of the drafting of the sentencing opinion. *Id.* at ¶ 12. The trial court denied the motion. *Id.* at ¶ 14. The trial court specifically ruled:

On July 16, 2008, this Court addressed a similar motion for new trial filed by the Defendant. The underlying basis for that motion was the alleged involvement of the Trumbull County Prosecutor's Office in the preparation of findings of fact and conclusions of law relative to a judgment entry overruling Defendant's Motion to Suppress. The Court stated: There is no provision in the Ohio Criminal Rules that provide for a new sentencing hearing." ***

The underlying basis of the present motion for a new sentencing hearing before the Court is the alleged involvement of the Trumbull County Prosecutor's Office in the preparation of the Defendant's sentencing hearing entry. For the same reasons set forth in its July 16, 2018 judgment entry, the Court finds that Defendant's motion for a new sentencing hearing to be not taken as well. Therefore, the motion for new sentencing hearing is hereby overruled.

(Exhibit A, pp. 1-2).

Jackson appealed to the Eleventh Appellate District and raised the following issue:

[1] THE TRIAL COURT ERRED WHEN IT OVERRULED MR. JACKSON'S MOTION FOR A NEW SENTENCING HEARING[.]

(*Jackson*, ¶ 15). The Court of Appeals sustained this assignment of error.

It ruled in pertinent part:

In his first assignment of error, appellant argues that the trial court erred by overruling his motion for a new sentencing hearing. We agree.

(*Id.* at ¶ 17).

For the foregoing reasons, appellant's first assignment of error is well-taken, and his second assignment of error is moot. The sentence of the Trumbull County Court of Common Pleas is vacated. This case is remanded for resentencing and for proceedings consistent with this opinion.

(*Id.* at ¶ 33).

The State attempts to reconcile the decisions in *David* and *Jackson* by claiming that "the Eleventh District went on to distinguish *Davie* in *State v. Jackson*, 11th Dist. No. 2009-T-0050, 2010-Ohio-5054, but only because the trial court admitted delegating the typing of Defendant's sentencing entry to the prosecutor's office." (State's Response, p. 5, n. 1). This is incorrect, the *Jackson* Court found *Davie* distinguishable because *Jackson*, unlike *Davie* had demonstrated that the trial court had involved the prosecutor in the drafting process. *Jackson* at ¶ 28.

Therefore, contrary to the State's assertions, *Jackson* properly raised the constitutional issue in a new trial motion.¹

¹ The State subsequently repeats the same argument in its pleading. (State's Response, pp. 9-11). The fact that the State re-raises the identical issue renders it no more persuasive.

II. Jackson's Constitutional Claim Is Not Time Barred.

The State argues that Jackson, within the last fifteen years with the exercise of reasonable diligence, could have discovered the evidence on which his new sentencing trial is premised. (State's Response, pp. 5-6). The State misunderstands Jackson's pleading. It is not premised on newly discovered evidence, but on a recent decision of the United States Supreme Court. The State's argument conflates the two separate and distinct grounds for a motion for new trial.

Jackson's constitutional issue is not time barred.²

III. Jackson's Constitutional Claim Is Not Barred by the Doctrine of Res Judicata.

The State, evidently not having faith in the persuasiveness of its first two procedural arguments, offers the Court yet another procedural argument, Jackson's claim is barred by res judicata. (State's Response, pp. 12-14).

The State begins its argument by citing two Ohio Supreme Court cases, *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967) and *State v. Cole*, 2 Ohio St.3d 112, 443 N.E.2d 169 (1982). (State's Response, p. 13). However, both those cases involve post-conviction proceedings and Jackson's constitutional claim is properly brought in a motion for new trial. See Section I, *supra*.

²The State also claims that Jackson's *Hurst* claim is barred by R.C. 2053.23(A), the statutory provision governing successor post-conviction petitions. (State's Response, pp. 11-12). Because Jackson's constitutional issue is properly before this Court in a new trial motion, the State's argument concerning the statutory provisions for successor post-conviction petitions is irrelevant.

The State offers an alternative argument, support of its *res judicata* defense, Jackson is attempting to use Crim R. 33 to raise a claim that he should have raised on direct appeal. (State's Response, pp. 13-14). The State fails to explain the manner that Jackson could have raised a *Hurst* claim on direct appeal. The Supreme Court of Ohio decided his direct appeal on January 1, 2006. *State v. Jackson*, 107 Ohio St.3d 300, 2006-Ohio-1, 839 N.E.2d 362 (2006). The Supreme Court of the United States decided *Hurst* more than ten years later, on January 12, 2016. *Hurst v. Florida*, 136 S. Ct. 616 (2016). The State claims that Jackson was "not unavoidably prevented" from discovering the legal authority," presumably referring to *Hurst*. (State's Response, p. 14). The State does not identify the manner in which Jackson could have identified during his direct appeal the decision in *Hurst*, given that the Supreme Court of the United States did not issue the opinion until 2016.

IV. *Hurst* Is Applicable to Ohio Capital Cases.

The State premises its argument on three cases and its attempt to distinguish a fourth case. None of the State's efforts are persuasive.

A. The State's reliance on *State v. Belton* is misplaced.

The State cites *State v. Belton*, 2016-Ohio-581. (State's Response pp. 14-15). *Belton* involved a defendant who waived his right to a jury trial and was sentenced to death by a three-judge panel. Thus, the Supreme Court's decision in *Belton*, with respect to the sentencing duties of the trial judge as opposed to a jury, clearly constitutes *dicta*.

In addition, the Supreme Court of Ohio's references in *Belton* to *Hurst* were made without the benefit of any briefing on the *Hurst* holding. See *State v. Belton*, Case No. 2012-0902, Supreme Court of Ohio electronic docket: <https://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2012/0902>.

Belton first cited *Hurst* (without any discussion) in his Notice of Supplemental Authorities, filed on January 21, 2016, five days prior to oral argument. At the oral argument, counsel for Belton did not raise the *Hurst* issue, and when questioned by the Court, stated that he was not prepared to argue the issue.³

Finally, the Supreme Court of Ohio decided *Belton* on April 20, 2016. It granted the defendant's motion to remand for *Hurst* error in *State v. Kirkland*, Ohio Supreme Court No. 2010-0854, 2016-Ohio-2807 on May 4, 2016. See Motion for a New Mitigation Trial, pp. 14-15.⁴ If the Court had definitively decided the *Hurst* issue in *Belton*, as the State argues, then the Court would not have granted the *Hurst* motion in *Kirkland*.

B. The State's reliance on *State v. Mason* is also misplaced.

The State copies more than two pages of the decision in *State v. Mason*, 3rd Dist. No. 9-16-24, 2016-Ohio-8400 in which that appellate court found *Hurst* inapplicable to the State of Ohio. (State's Response, pp. 15-17). However, as the State concedes, "Mason is not controlling upon this court" (State's

³ Counsel for the State of Ohio at oral argument discussed the *Hurst* decision for eight minutes. See, <http://www.ohiochannel.org/video/case-no-2012-0902-anthony-belton-v-state-of-ohio>. (Throughout remainder of State's argument beginning at 25:25.)

⁴ Unlike *Belton*, the *Kirkland* decision arose in the context of a capital sentence handed down by a jury at trial. This distinction is crucial under any *Hurst* analysis.

Response, p. 17).

C. The State's reliance on *State v. Petro* is also misplaced.

The State cites the Court to *State v. Petro*, 148 Ohio St. 505, 76 N.E.2d 370 (1947). (State's Response, pp. 17-18). The Supreme Court of Ohio therein established the test that a trial court should apply when deciding a motion premised on newly discovered evidence and Crim. R. 33(A)(6). *Petro*, syllabus. Because Jackson's motion for a new trial is not based on newly discovered evidence or Crim. R. 33(A)(6), *Petro* has no applicability to this case.

D. The State's reliance on *State v. Sheppard*, *State v. Fears*, *State v. Myers*, and *State v. Gapen* is also misplaced.

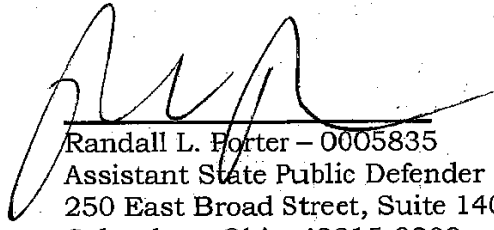
In an effort to reduce the persuasiveness of the Supreme Court remand order in *State v. Kirkland*, the State observes "the same the day [the Court granted the motion in *Kirkland*] the court *denied* *Hurst*-related motions in four other death penalty cases where the inmates sought the same relief. *State v. Sheppard* and *State v. Fears*, 147 Ohio St.3d 1439 (2016); *State v. Myers*, and *State v. Gapen*, 147 Ohio St.3d 1440 (2016)." (State's Response, p. 18).

After the Supreme Court of Ohio, on May 4, 2016, granted the motion in *Kirkland*, the State of Ohio moved for reconsideration. The Ohio Prosecuting Attorney's Association submitted an amicus pleading in support of the motion. On November 9, 2016, the Supreme Court denied the State's motion for reconsideration. *State v. Kirkland*, 147 Ohio St.3d 1440, 2016-Ohio-7681, 63 N.E.3d 158. Thus, the State's argument concerning the impact of the orders in *Sheppard*, *Fears*, *Myers*, and *Gapen* is not well taken.

Conclusion

For the reasons set forth in his motion and this reply, Nathaniel Jackson respectfully requests that this Court grant him leave to file his motion for new mitigation trial which is attached to his motion to for leave to file.

Office of the
Ohio Public Defender

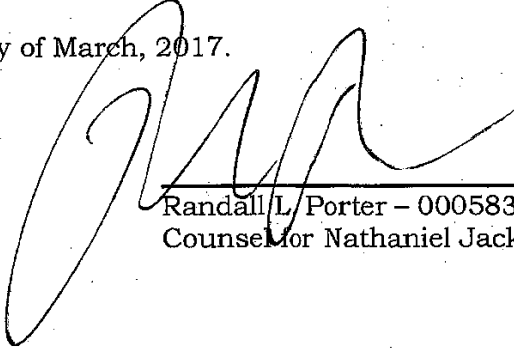


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Counsel for Nathaniel Jackson

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Nathaniel Jackson's Reply in Support of his Motion For Leave To File A Motion For A New Mitigation Trial* was served by U.S. mail to Luwayne Annos, Assistant Prosecuting Attorneys, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 2nd day of March, 2017.



Randall L. Porter – 0005835
Counsel for Nathaniel Jackson

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

-VS-

NATHANIEL JACKSON
Defendant.

Case No 2001-CR-794

JUDGE RONALD J. RICE

**PROPOSED JUDGMENT
ENTRY**

Now comes the Plaintiff, State of Ohio, by and through undersigned counsel who adopt and incorporate all previous arguments here from its Memorandum in Opposition to Defendant's Motion for Leave to file a Motion for New Mitigation Trial filed in this Court February 21, 2017, in lieu of further briefing on this issue. Per request of this Court, the State files the attached Proposed Judgment Entry denying leave to file a belated Crim. R. 33 Motion for New Mitigation Hearing.

KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY

2017 MAR 22 AM 9:02

TRUMBULL COUNTY
CLERK OF COURTS

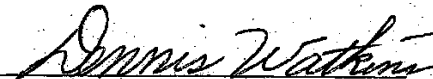


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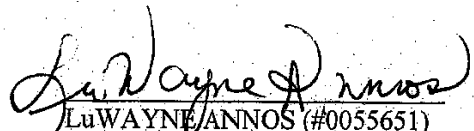


ORIGINAL

Respectfully submitted by:


DENNIS WATKINS (#0009949)
Prosecuting Attorney


CHARLES L. MORROW (#0040575)

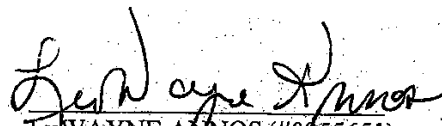

LUWAYNE ANNOS (#0055651)
Assistant Prosecuting Attorneys
Trumbull County Prosecutor's Office
160 High St. 4th Floor
Warren, Ohio 44481

Telephone: (330) 675-2426
Fax: (330) 675-2431

COUNSEL FOR PLAINTIFF
THE STATE OF OHIO

PROOF OF SERVICE

I do hereby certify that a copy of the foregoing proposed entry was sent by ordinary U.S. Mail to Atty. Randall L. Porter (#0005835), Assistant Public Defender, 250 E. Broad St., Suite 1400, Columbus, Ohio 43266, Counsel for Defendant Nathaniel Jackson, on this 22nd Day of March, 2017.


LUWAYNE ANNOS (#0055651)
Assistant Prosecuting Attorney

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION -
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2001 CR 00794

**STATE OF OHIO
PLAINTIFF**

VS.

JUDGE RONALD J. RICE

**NATHANIEL E JACKSON
DEFENDANT**

JUDGMENT ENTRY

This matter is before the Court on the Motion for Leave to File a Motion for New Mitigation Trial filed by Defendant, Nathaniel Jackson. The Court has reviewed the motion and memoranda, opposition in response, reply, pleadings and the relevant applicable law.

The Court finds there are procedural as well as substantive deficiencies in Jackson's request. Initially, the Court finds the motion for leave to file motion for a new mitigation trial is akin to seeking leave to file a request for a new trial pursuant to Crim.R. 33. Jackson claims irregularity in the sentencing proceedings as the basis for the motion. However, the Court finds the motion is untimely. Pursuant to Crim.R. 33(B), motions such as this must be filed within fourteen days after the verdict was rendered. Jackson is entirely outside this time frame. Therefore, the Court finds no basis on which to grant leave to file a request under Crim.R. 33.

In addition, if the Court were to construe Jackson's motion as a post-conviction relief request pursuant to R.C. 2953.21, the Court finds no basis on which to grant such a request. The Court finds such a post-conviction request would be time barred as the request was filed well beyond the 180-day statutory period.

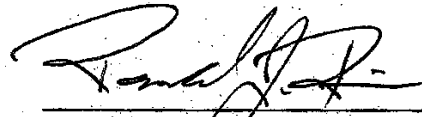


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Even if the Court did not find the requests were time barred as explained herein, the Court finds the reliance upon the *Hurst v. Florida*, 136 S. Ct. 616 (2016), decision is misplaced. "*Hurst*, *** does not invalidate Ohio's capital sentencing scheme because Ohio's scheme is materially different from Florida's." *McKnight v. Bobby*, S.D. Ohio No. 2:09-CV-059, 2017 WL 631411, *3-4. In fact, the Ohio mechanism provides an additional layer of protection not present in *Hurst*. Id. Indeed, "Ohio's capital-sentencing scheme is unlike the laws at issue in *Ring* and *Hurst*." *State v. Belton*, 2016-Ohio-1581, ¶159.

Therefore, the Court finds there is no applicable law, criminal rule or case precedent on which to base Jackson's recent filing for leave to file a motion for new mitigation trial. Accordingly, the Court finds the request for leave is not well taken and the same is hereby denied.

IT IS SO ORDERED.


JUDGE RONALD J. RICE

Date: 03-29-2017
Copies to:
RANDALL L PORTER
LUWAYNE ANNOS

2017 MAR 29 AM 11:35
KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY

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STATE OF OHIO
Respondent

v.

NATHANIEL E. JACKSON,
Petitioner

TRUMBULL COUNTY
CLERK OF COURTS

Trial Case No. 2001 CR 00794

Court of Appeals No. _____

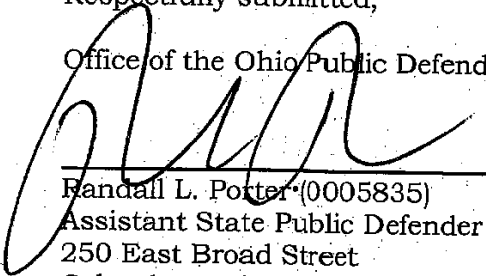
JUDGE RONALD J. RICE

Nathaniel E. Jackson's Praecipe

This is to direct the Clerk of the Trumbull County Common Pleas Court to prepare a record of the original papers and exhibits filed in the court during the trial proceeding, post-conviction proceedings, and new trial proceedings before the Court, a certified copy of the docket and all journal entries, and a certified copy of the trial transcript, including exhibits, in the above-captioned case, pursuant to Appellate Rule 9, along with the affidavit of indigency and all documents necessary under the local appellate rules. The transcript was previously prepared for his direct appeals. These documents are to be forwarded to the Eleventh District Court of Appeals, Trumbull County, Ohio.

Respectfully submitted,

Office of the Ohio Public Defender


Randall L. Porter (0005835)
Assistant State Public Defender
250 East Broad Street
Columbus, Ohio 43215-9308



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CRN

(614) 466-5394 (Voice)
(614) 644-0708 (Facsimile)
Email: Randall.Porter@opd.ohio.gov

Counsel for Nathaniel E. Jackson

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Nathaniel E. Jackson's Praecipe* was served by both electronic and U.S. mail Luwayne Annos, Assistant Prosecuting Attorney, Trumbull County Prosecutor's Office, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 25th day of April, 2017.



Randall L. Porter (0005831)
Counsel for Nathaniel E. Jackson

NOTICE OF APPEALTrumbull County Court of Common Pleas

(ENTER NAME OF TRIAL COURT)

State of OhioTrial Court No. 2001 CR 00794Plaintiff-AppellantCourt of Appeals No. 2017 TR 41

- vs -

FILED
COURT OF COMMON PLEAS**FILED**
COURT OF APPEALSNathaniel E. JacksonAPR 25 2017APR 25 2017Defendant-AppellantTRUMBULL COUNTY, OHKAREN INFANTE ALLEN, CLERKTRUMBULL COUNTY, OHKAREN INFANTE ALLEN, CLERKNotice is hereby given that (name each Appellant) Nathaniel E. Jacksonappeals to the Eleventh District Court of Appeals from the trial court Judgment Entry time-stamped March 29, 2017(describe it and attach a copy of each Judgment Entry being appealed) denying his Motion For Leave To File AMotion For A New Mitigation Trial☐ Check here if court-appointed and attach copy of appointment and Financial Disclosure/Affidavit of Indigency.☐ Check here if any co-counsel for Appellant and attach a separate sheet indicating name, address, telephone no. and fax no.**TRANSCRIPT OF PROCEEDINGS INFORMATION - App. R. 9(B)****Counsel or Appellant is responsible for obtaining required information from Court Reporter at the time of filing the Notice of Appeal if a transcript will be ordered.**☐ I have ordered a complete transcript from the court reporter
Estimated completion date: _____

Estimated number of pages: _____

☐ I have ordered a partial transcript from the court
Estimated completion date: _____

Estimated number of pages: _____

☐ A statement pursuant to App. R. 9(C) or (D) is to be prepared in lieu of a transcript.☐ Videotapes to be filed. See App. R. 9(A) or (B)☐ No transcript or statement pursuant to either App. R. 9(C) or (D) is necessary.☒ Transcript has been completed and already made part of the record.See brief template on this court's website for direction regarding form - www.11thcourt.co.trumbull.oh.usApril 25, 2017

Date

Signature of Attorney or Appellant

Randall L. Porter

Name

Office of the Ohio Public Defender 250 East Broad Street- Suite 1400

Address

Columbus, Ohio 43215

City, State, Zip Code

0005835

Atty. Regis. No.

614-466-5394614-644-0708

Telephone No.

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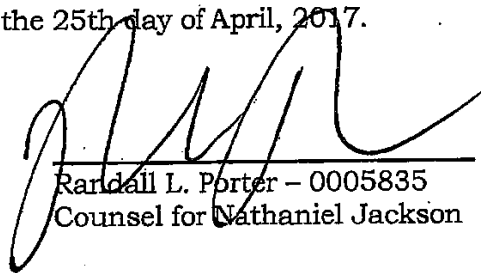
Randall.Porter@opd.ohio.gov

E-Mail Address

Admin/Forms/New NA.4
Revised 04/12/2010**ORIGINAL**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Nathaniel Jackson's Notice of Appeal with the Attached Judgment Entry and Docketing Statement* was served by both electronic and U.S. mail to Luwayne Annos, Assistant Prosecuting Attorneys, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 25th day of April, 2017.



Randall L. Porter - 0005835
Counsel for Nathaniel Jackson

ELEVENTH DISTRICT COURT OF APPEALS DOCKETING STATEMENT

(To be attached to and filed with Notice of Appeal)

State of Ohio

Name of Trial Court Trumbull County Common Pleas Court

Plaintiff-Appell ee

Trial Court No. 2001 CR 00794

- vs -

Nathaniel E. Jackson

Court of Appeals No. 2017 TR 41
FILED
COURT OF APPEALS

APR 25 2017

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK2017 APR 25 AM 11:55
KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY

Defendant-Appell ant

REGULAR CALENDAR☒ Case should be assigned to the Regular Calendar with full briefing.**ACCELERATED CALENDAR - (Check if this applies)**☐ I have read Loc.R.11.1. This appeal meets those requirements, and I request that it be briefed and decided on the Accelerated Calendar.**EXPEDITED APPEAL**☐ This case should be heard as an expedited appeal as defined under App.R. 11.2 because: (State provision of App.R. 11.2 or applicable statute):**ORAL ARGUMENT**☐ To expedite oral argument, I am willing to travel to whichever adjoining county in which the Eleventh District has the first available date.☒ I want oral argument in this appeal set in the county in which the appeal originates.**CASE TYPE**☒ **A. Criminal**Specify nature of offense(s) (e.g., assault, burglary, rape): This appeal is from the denial of leave to file a new trial motionAggravated Murder with capital specifications, Aggravated Burglary, and Aggravated Robbery(1) Is the defendant presently in jail? ☒ Yes ☐ No If the answer is "Yes," give date of incarceration 12/20/2001When is he/she due to be released (if you know)? Under a sentence of death(2) Has a stay been filed in the trial court? ☐ Yes ☒ No If granted, what are the terms? (3) Does the judgment entry comply with Crim.R. 32(C) by including the plea, verdict or findings, and a sentence?
Appeal from denial of a motion for leave to file a New Trial Motion
☐ Yes ☒ No If the answer is "No," this is not a final appealable order.☐ **B. Post-Conviction Relief** Date of Conviction: ☐ **C. Civil**Specify cause(s) of action: ☐ App.R. 11.2 (Abortion, Adoption, or Termination of Parental Rights Appeal).

PROBABLE ISSUE FOR REVIEW Whether Appellant timely filed his motion for a new trial and the applicability of Hurst v. Florida 136 S. Ct. 616 (2016) to the sentencing procedures employed in Appellant's case.

THE FOLLOWING QUESTIONS APPLY TO ALL CIVIL AND ADMINISTRATIVE APPEALS

1. FINAL APPEALABLE ORDER

(a) Has the trial court disposed of all claims by and against all parties?

☒ Yes (Attach copies of all judgments and orders indicating that all claims against all parties have been concluded.)

☐ No

(b) If the answer to (a) is "No," has the trial court made an express determination that there is "no just reason for delay," pursuant to Civ.R. 54(B), with respect to the judgment or order from which the appeal is taken?

☐ Yes (Attach a copy of that order.)

☐ No

(c) Is the judgment order subject to immediate appeal under R.C. 2505.02? If so, set forth the specific provision(s) that authorize this appeal:

(d) Does the right to an immediate appeal arise from a provision of a statute other than R.C. 2505.02? If so, identify that statute:

2. MEDIATION

(a) Would a pre-hearing conference or mediation assist in the resolution of this matter?

☐ Yes

☒ No

☐ Maybe

Please explain (optional)

CERTIFICATE OF SERVICE: I certify that I have mailed or otherwise delivered a copy of this Docketing Statement to all counsel of record, or to the parties if unrepresented. The following is a listing of the name, address and telephone number of all counsel and the parties they represent and any parties not represented by counsel: (attach extra sheet if necessary)

Assistant Public Defender Randall L. Porter (0005835)

250 East Broad Street, Columbus, Ohio 43215

614-466-5394 (Phone); 614-644-0708 (Fax)

Counsel for Nathaniel E. Jackson

Assistant Prosecutor Luwayne Annos (0055651)

160 High Street, N.W., 4th Floor, Warren, Ohio 44481

330-675-2426 (Phone); 330-675-2431 (Fax)

Counsel for the State of Ohio

DATE April 25, 2017

Admin/Forms/New Dkt. Stmt. 4
Revised 04/26/2011

SIGNATURE

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION -
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2001 CR 00794

**STATE OF OHIO
PLAINTIFF**

VS.

JUDGE RONALD J. RICE

**NATHANIEL E JACKSON
DEFENDANT**

JUDGMENT ENTRY

This matter is before the Court on the Motion for Leave to File a Motion for New Mitigation Trial filed by Defendant, Nathaniel Jackson. The Court has reviewed the motion and memoranda, opposition in response, reply, pleadings and the relevant applicable law.

The Court finds there are procedural as well as substantive deficiencies in Jackson's request. Initially, the Court finds the motion for leave to file motion for a new mitigation trial is akin to seeking leave to file a request for a new trial pursuant to Crim.R. 33. Jackson claims irregularity in the sentencing proceedings as the basis for the motion. However, the Court finds the motion is untimely. Pursuant to Crim.R. 33(B), motions such as this must be filed within fourteen days after the verdict was rendered. Jackson is entirely outside this time frame. Therefore, the Court finds no basis on which to grant leave to file a request under Crim.R. 33.


In addition, if the Court were to construe Jackson's motion as a post-conviction relief request pursuant to R.C. 2953.21, the Court finds no basis on which to grant such a request. The Court finds such a post-conviction request would be time barred as the request was filed well beyond the 180-day statutory period.



Even if the Court did not find the requests were time barred as explained herein, the Court finds the reliance upon the *Hurst v. Florida*, 136 S. Ct. 616 (2016), decision is misplaced. "*Hurst*, *** does not invalidate Ohio's capital sentencing scheme because Ohio's scheme is materially different from Florida's." *McKnight v. Bobby*, S.D. Ohio No. 2:09-CV-059, 2017 WL 631411, *3-4. In fact, the Ohio mechanism provides an additional layer of protection not present in *Hurst*. *Id.* Indeed, "Ohio's capital-sentencing scheme is unlike the laws at issue in *Ring* and *Hurst*." *State v. Belton*, 2016-Ohio-1581, ¶59.

Therefore, the Court finds there is no applicable law, criminal rule or case precedent on which to base Jackson's recent filing for leave to file a motion for new mitigation trial. Accordingly, the Court finds the request for leave is not well taken and the same is hereby denied.

IT IS SO ORDERED.


JUDGE RONALD J. RICE

Date: 03-29-2017

Copies to:
RANDALL L PORTER
LUWAYNE ANNOS

2017 MAR 29 AM 11:35
KAREN HEFARIE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
TRUMBULL COUNTY
CLERK OF COURTS

FILED
COURT OF APPEALS

APR 25 2017

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO

Plaintiff,

v.

NATHANIEL E. JACKSON,

Defendant,

Case No. 2001 CR 00794

JUDGE RONALD J. RICE

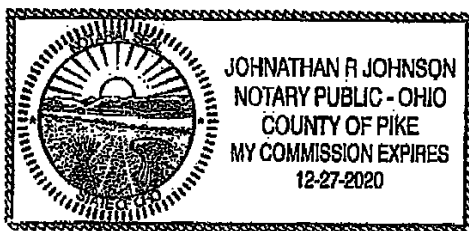
AFFIDAVIT OF INDIGENCY

County of Ross)
State of Ohio)

I, Nathaniel E. Jackson do solemnly swear that I presently, have no means of financial support and no assets of any value and, therefore, cannot afford to pay for any legal services, fees, or costs on my behalf in the above-styled case; that I am presently incarcerated at the Chillicothe Correctional Facility; and that I have \$ 17.00 income per month.

Nathaniel Jackson
NATHANIEL E. JACKSON
#440-891
P.O. Box 5500
Chillicothe, Ohio 45601

Sworn and subscribed in my presence this 21 day of April 2017.



Johnathan R. Johnson
NOTARY PUBLIC
My Commission Expires: 12-27-2020